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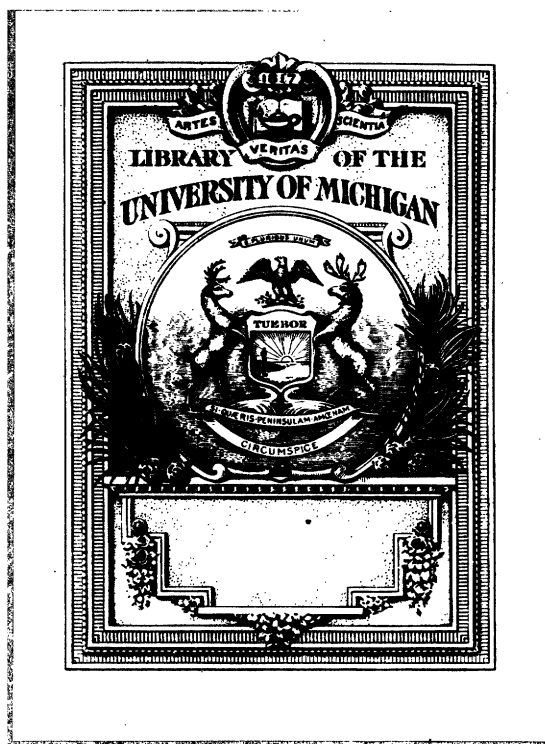
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ASON
STORY
THE
A CASE





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TO
THE RIGHT HON. SIR WILLIAM ERLE,
SOME TIME
LORD CHIEF JUSTICE OF THE COURT OF COMMON PLEAS,
WHO, IN THE COURSE OF A LONG JUDICIAL CAREER,
BY HIS EARNEST LOVE OF JUSTICE,
HIS ADMIRABLE JUDICIAL ABILITIES,
AND HIS MANY GREAT QUALITIES OF MIND,
ATTAINED, IN NO ORDINARY DEGREE, THE RESPECT OF THE SUITORS,
AND THE ESTEEM OF THE BAR,

This Work,

UPON A SUBJECT IN WHICH HE HAS TAKEN A GREAT INTEREST,
AND WRITTEN (IT IS HOPED) IN THE SPIRIT OF JUSTICE AND OF TRUTH,
IS,
(WITH HIS KIND PERMISSION,)

MOST RESPECTFULLY INSCRIBED.

THE
HISTORY OF THE JAMAICA CASE:

BEING AN ACCOUNT,

FOUNDED UPON OFFICIAL DOCUMENTS,

OF THE

Rebellion of the Negroes in Jamaica:

THE CAUSES WHICH LED TO IT,

AND THE

MEASURES TAKEN FOR ITS SUPPRESSION;

THE AGITATION EXCITED ON THE SUBJECT, ITS CAUSES AND ITS
CHARACTER; AND THE DEBATES IN PARLIAMENT, AND THE
CRIMINAL PROSECUTIONS, ARISING OUT OF IT.

Second Edition, Enlarged and Corrected.

BY

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1869.

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* In consequence of the shortening of the Introduction in this Edition, the intervening pages are cancelled.

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* The author desires emphatically to disclaim any intention to make any imputations upon the judicial character of the Lord Chief Justice, though he should have supposed it was hardly necessary for him to do so, since he has repeatedly spoken it with the highest respect. And see note to his name in the Index.

PREFACE.

THE Jamaica case, for nearly three years, engaged public attention, and, as Mr. Cardwell observes, caused an excitement unprecedented in our times. It raised a controversy in which some of the most distinguished men in the country took opposite sides; it caused debates in Parliament, and prosecutions in the courts, which have only recently concluded. It was fit that such a case should be the subject of history, and it is indeed precisely such cases which, after the excitement is over, are the most fitting subjects of calm historical review. In these pages it has been attempted to supply at once a permanent record and an impartial review of the whole case, and to afford the materials for a fair and dispassionate judgment. The Author has taken the statement of the facts, as found by the Commissioners, as the basis of the history, and has only ventured to discuss the inferences to be drawn therefrom, or the conclusions to be founded thereon. But he has felt himself at liberty to interpret their *general* findings by their more *particular* findings, and thus to arrive at their real results. If in so doing he shall have presumed to suggest some considerations which may not have occurred to them, or to the other high authorities who may have had to pronounce upon the case, he ventures to think that, after the lapse of time and the advantage of repeated discussions, this may not involve any presumption in him, nor any reflection upon them. And he will add as an excuse, if any were needed, for his presuming to express such opinions—that he knows

they are entertained by some of the most eminent persons in the kingdom. He most emphatically desires to say of *every one* that he is sure there has not been any intention to do injustice;* and, for himself, that his only object has been a sincere desire to promote the cause of justice and of truth.

The Author desires to observe that, in the view which he took, (and which has been since confirmed by judicial authority,) the measures necessary for the entire suppression of the rebellion, and the removal of the danger, depended on the real *character* of the rebellion, and the *degree* of the danger; and this, again, turned upon the causes which led to it; and which, in the Author's view, were deeply rooted, and had their origin in antecedent events, and in the condition and circumstances of the colony for some years past; and were moreover entirely peculiar to the particular colony in question, and could not possibly apply to any other, making this an exceptional case, without a possible parallel upon earth. It is obvious, that to do any justice to this view, it was necessary to enter at some length into these circumstances, and the previous history of the colony, before coming to the account of the rebellion itself. And this he has endeavoured to do in the Introduction, which has been written with the object of placing the reader as much as possible in the position in which Mr. Eyre was placed when the rebellion broke out; and to present all the considerations which would naturally occur to his mind at the period during which martial law was maintained.

TEMPLE;
30th November, 1868.

* He *especially* desires this to be understood of the Lord Chief Justice.

INTRODUCTION.

The Jamaica case is one of such importance, and has caused so many public proceedings, and has awakened so much public interest, that it is natural that there should be some complete record of it; and the period has arrived when it may be possible to take a complete and comprehensive view of it, and to form a dispassionate judgment upon it. Long as it has been before the public, various causes have hitherto operated to prevent this. The excitement caused by the first agitation, with all its gross exaggerations and its monstrous misconceptions, of course only darkened or obscured the subject. On the other hand, when the careful and judicial report of the Commissioners was presented, public interest in it had been almost exhausted, especially as it was published at the moment of a change of government; it attracted little attention, some general phrases in it about "excessive punishments" caught the public mind, and more particular statements were little attended to. And as the Governor was recalled and he alone *suffered*, the impression was naturally produced, of great excesses, for which he was responsible. The preposterous murder prosecutions only distracted attention from the real merits of the case as a *whole*, and the impression remained until the recent judicial proceedings in the Queen's Bench, when, after two years' consideration, every possible charge was brought against the Governor, and upon careful investigation it was found that at all events there was no such grave culpability as would support a *criminal* charge of any kind.

The case was necessarily considered, however, on that

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occasion, with reference *only* to the responsibility of the Governor and his criminal responsibility. And the occasion is natural, and it is also favourable, for consideration of the *whole* case, which has reference to questions of more general importance than even the responsibility of the Governor, whether legal or moral. The charge against him was not for personally directing excesses, for no such personal criminality was ever charged, but for allowing excesses on the part of others. And it concerns the honour and character of this country to consider the extent to which any such excesses were established, and the extent to which—if at all—the Governor could be deemed morally responsible for them. The learned judge, in directing the grand jury upon the question of criminal culpability, that is to say, a grave degree of culpability, necessarily laid down general principles upon which the question of culpability must depend, viz., that they must look at the case *as a whole*, that they must endeavour as far as possible to *place themselves in the position of the Governor at the time*, to see with his eyes, and to hear with his ears, to take the information and the means of judgment presented to his mind; and to try the question by this test, what would a man of *ordinary sense* think and do under such circumstances? This general principle equally applies to moral as well as to legal culpability (which indeed is but a *grave* degree of *moral* culpability) and it applies to all others as well as to the Governor. And it concerns the honour and character of this country for humanity, that the degree of excesses committed in a British colony, even on an occasion of great emergency, should not be exaggerated; as it concerns the honour and character of the country for justice that a Governor who has preserved a great colony from a terrible fate should not be sacrificed to such exaggerations.

The general principle laid down by Mr. Justice Blackburn, that the case must be looked at *as a whole*, and also *as it appeared at the time*, and through the medium of the

information, and the apprehensions then present to the mind of those concerned, is one which must commend itself to the mind of any person of common sense or common justice. The principle was ably expounded and eloquently enforced by the present Lord Chief Justice of England, when Attorney-General, on the last previous occasion which had arisen, in the case of Ceylon. He, as Attorney-General, the official adviser of the Crown, thus in his place in Parliament delivered his opinion, the question being, it will be observed, as in this present instance, whether martial law had been continued too long, and whether the punishments had been excessively severe. It was, he said, a judicial inquiry :—

“It was a grave accusation against two public men, charging the one with having caused, the other with having sanctioned and approved, of a reckless sacrifice of human life ! It was scarcely possible to conceive a more serious accusation than this, to brand these two public men with the stigma of indelible reproach, and to hold them up to public execration. It was therefore a judicial inquiry. But what do they mean by a judicial inquiry ? Did it not mean that they were to bring to it *calm and dispassionate minds*, that it was an inquiry in *which political passions ought to have no place*, and to *exercise no influence* ? By a judicial inquiry he understood an inquiry in which every man who was called on to give his vote on the decision, should have taken the utmost pains to master the case and the evidence on which it rested, and should be able to say that he was, not only in point of impartiality, but of information, competent to form an opinion upon the matter in issue.”

Observe the *principle* laid down :—

“They were told that the rigour exercised was excessive. He admitted that it was, if they looked at the amount of punishment only with reference to this particular rebellion. But in considering the question of punishment, it was necessary that the Governor should look at all the surrounding circumstances of the case. They did not punish men simply for the offences they had committed ; they punished them in order to deter others from following their example.” (Ibid., p. 227.)

The principle was sound and just, and thus he applied it :—

“Now, what were the circumstances of this case ? It was all very well to talk of this comparatively bloodless rebellion, which they had sup-

pressed without difficulty by the troops that were sent to the spot. But let them recollect the spirit of the people, their disaffection to the Government, and all the circumstances connected with the native population of the colony, especially previous rebellions." (Hansard's Debates, vol. 117.)

And then the Attorney-General proceeded to consider the circumstances and some facts in the history of the colony, especially *previous rebellions*. Having noticed one as long ago as 1818, he asked:—

"Has the spirit and affection of the people improved since? Quite the contrary. Had they any reason to believe that the affection of the people towards the Government was stronger now than ever? Not at all." (Ibid.)

"Was it not the duty of the Governor, with all the experience of the past, when he was considering how far he might extend the prerogative of mercy, to take into consideration all the circumstances in awarding to each party his measure of punishment, to look at the spirit of the people, and the relative dispositions of the people and of the Government." (Ibid., p. 229.)

And on that occasion the Attorney-General concluded with these eloquent words, equally applicable in the present case:—

"No doubt it was of importance that our colonial policy should be based upon sound and safe principles, but it was also of importance that the House should do justice to the Governor of our distant colonies; and if there was a case for inquiry, *deal fairly with the case, and enter upon any investigation in the spirit of impartiality, fairness, and candour.*" (Ibid., p. 232.) "It was said, and said truly, that it was essential that these colonies and distant dependencies should be protected against the cruelty and caprice of a governor, but *let them take care*, while they talked of establishing a control over the colonial policy, that they *did not do it at the expense of an innocent man*—let them take care that they did not condemn a man for having done his best under trying circumstances." (Ibid., p. 227.) "The charge under consideration affected the Governor's character in the tenderest point; for to tell a man that he had been guilty of shedding blood unnecessarily was a charge of a most serious and exaggerated character. As involving a question, not of political principles, but of public character, he said they were bound, as just and generous men, to lose sight of everything except truth, and that great and prominent consideration, the justice they owed to all who were accused, and upon whom they had to pass judgment." (Ibid., 233.)

The Lord Chief Justice then, when Attorney-General, justly and eloquently maintained, when the question was only as to *moral* responsibility, what his learned brother, Mr. Justice Blackburn, has just laid down as to legal responsibility, that such a case must be looked at as *a whole*, and with reference to the aspect of things *at the time*, and as they would present themselves to the minds of those on the spot, with reference to *all the surrounding circumstances*, and especially to the former history of the colony, and its particular state and condition. And the present premier, Mr. Disraeli, put the question on the same footing when he said that it depended on the nature of the emergency, and whether the measures taken were disproportioned to the emergency.

Now what *was* the exigency in the case of Jamaica? What was the nature and degree of the *danger*? The consideration of a case of this kind must turn mainly upon that. For the measures necessary to meet a danger must be proportioned to the magnitude and nature of the danger to be met and encountered. And what *was* the danger? It was the danger of a negro insurrection, of a war of extermination against the white population, in a colony where the disproportion between the races is greater, and the *peril* therefore is greater, than in any other country on the face of the earth. It was a case, therefore, in its nature extreme, nay, exceptional, nay, entirely peculiar. It was a danger which could not *have had any parallel in any other country upon earth*. To compare an insurrection of negroes in a colony once a slave colony, with a rebellion of men of British blood, or of any European race would be mere pedantry. To compare it with the worst possible case of a political rebellion would be idle folly. It is a peril wholly exceptional, and the like of which is not to be met with upon earth. And in the case of Jamaica the peril was greater than it could possibly be anywhere else, because the disproportion between the numbers of the races was far greater than in any other country. It was a negro rebellion, and

a negro rebellion with the object of the entire extermination of the whites by means of wholesale massacre, and that in a colony where the blacks are to the whites as thirty to one.

A negro rebellion is necessarily, sooner or later, a war of *extermination*. If not so intended originally, it ultimately, unless soon suppressed, must become so through the necessity of fear. The historian truly tells us:—

“The insurrection of slaves is the most dreadful of all commotions. The West India negroes exterminate by fire and sword the property and lives of their masters. Universally the strength of the reaction is proportioned to the oppression of the weight which is thrown off. Fear is the chief source of cruelty. Men massacre others because they are apprehensive of death themselves. Revolutions are comparatively bloodless when the influential classes guide the movements of the people, and sedulously abstain from exciting their passions. They are the most terrible of all contests when property is arranged on one side and numbers on the other. The slaves of St. Domingo exceed the atrocities of the Parisian populace.” (Alison’s History of Europe, vol. i., p. 49.)

Jamaica is only one day’s sail from St. Domingo, where the horrors of negro insurrections had been realised again and again, and where, by the preponderance of numbers, the blacks had achieved not only emancipation but independence, and had established a negro state, which has ever since been a standing temptation to the blacks in Jamaica, and a standing terror to the whites. Well may it have been so, for Jamaica is the only negro colony where the number of the negroes at all equals those in St. Domingo, *and where the disproportion had even become greater*. In St. Domingo as in Jamaica the negroes were near half a million in number, but the whites in the former colony were at least twice as numerous. The case of Jamaica, therefore, was one of far greater peril, the preponderance of numbers being greater; and the vast colony of St. Domingo was one which had been for more than half a century, for seventy years, the scene of negro insurrections and of negro revolutions, likely to exercise a most dangerous and contagious influence on the enormous

and excitable black population of a colony so near as Jamaica. The history of Hayti was that of a colony which had achieved not only freedom but independence by means of the enormous preponderance of the blacks, and the ruthless perpetration of repeated massacres of the whites.

The historian thus describes the original outbreak of the rebellion in St. Domingo, the only colony which could afford any parallel to the case of Jamaica, and is within a day's sail of it; and thirty years before this, be it remembered, a negro rebellion had broken out in Jamaica, and was not suppressed until hundreds of lives had been sacrificed:—

“This vast conspiracy, productive in the end of calamities unparalleled even in the long catalogue of European atrocity, had for its object the total extirpation of the whites, and the establishment of an independent black government over the island. So inviolable was the secrecy, so general the dissimulation of the slaves, that the awful catastrophe was noways apprehended by the European proprietors; and a conspiracy which embraced nearly the whole negro population was revealed only by the obscure hints of a few faithful domestics. The explosion was sudden and dreadful, beyond anything ever seen before among mankind. In a moment the beautiful plains were covered by fires, while the negroes, like unchained tigers, rushed upon their masters, massacred them without pity, and threw them into the flames.” (*Alison's History of Europe*, vol. viii., p. 172.)

And again as to the outbreak in the southern part of the island:—

“The passions of the negroes were excited by the efforts of a society entitled ‘The Society of Friends of the Blacks,’ a universal revolution planned and organised without the slightest suspicion on the part of the planters, and the same night fixed on for its breaking out all over the island. Accordingly, at midnight the insurrection began. In an instant 1400 plantations were in flames, the buildings reduced to ashes, the unfortunate proprietors hunted down, murdered, or thrown into the flames, by the infuriated negroes. Ere long a hundred thousand negroes were in arms, who committed everywhere the most frightful atrocities. The horrors of a servile war universally appeared. The unchained African signalled his ingenuity by the discovery of new and unheard of modes of torture. The horrors inflicted on the women exceeded anything known even in the annals of Christian ferocity. The indulgent master was

sacrificed equally with the inhuman. On all alike, young and old, rich and poor, the wrongs of an oppressed race were indiscriminately wreaked. Crowds of slaves traversed the country with the heads of the white children affixed on their pikes, they serving as the standards of those infuriated assemblies." (Alison's History of Europe, vol. ii., p. 307.)

But these were only the original outbreaks in 1791. In the long terrible contest which ensued repeated massacres of the whites were committed. Thus, in June, 1793, speaking of the massacre at Cape Town, the historian says :—

"A scene of matchless horror ensued. Twenty thousand negroes broke into the city, and, with the torch in one hand and the sword in the other, spread slaughter and devastation around. The Europeans found themselves overwhelmed by the vengeance which had been accumulating for centuries in the African heart. Neither age nor sex were spared ; the young were cut down in striving to defend their homes ; the aged in the churches, where they had fled to implore protection ; virgins were immolated on the altar ; weeping infants were hurled into the fires. Amidst the shrieks of the sufferers, and the shouts of the victors, the finest city in the West Indies was reduced to ashes ; its splendid churches, its stately palaces, were wrapt in flames ; *thirty thousand human beings perished in the massacre.*" (Alison's History of Europe, vol. viii., p. 77.)

So in 1794 there was another terrible negro insurrection in St. Domingo, and hundreds of the whites and thousands of the blacks perished before it was put down. Nor was it only while the blacks were struggling for freedom that these massacres were committed. They equally occurred after they had achieved their independence ; and thus some years afterwards there was a massacre of the whites who remained. Of course similar insurrections occurred in our own slave colonies, In 1823 there was one in Demerara ; in 1831 in Jamaica :—

"A vast conspiracy was secretly organized among the negroes in Jamaica, in the end of 1831, which ere long broke out into an open insurrection so formidable as to justify entirely the fears expressed by the planters on the subject. The negroes on several estates refused to go to their work, alleging that they were free, and not obliged to do so. From this they proceeded to break in'o houses and take arms, or to bring out

weapons of their own, which they had secreted, and assembling in large bodies, marched in every direction over the island, inciting the slaves to join them, and burning or destroying every plantation or building which came within their reach. The houses and settlements of free people of colour, however humble, shared in the devastation equally with the larger plantations of the European. The unchained African marked, as he had done in Saint Domingo, in 1789, his first steps towards freedom by murder, conflagration, and every crime at which humanity recoils. The whole island was illuminated at night by the light of burning edifices, the sky darkened by day with the vast clouds of smoke which issued from the conflagrations. Martial law was proclaimed, the militia called out, several engagements took place with the rebels, in which they were routed; but when the insurrection was put down in one quarter, it broke out in another, and it was not finally suppressed till property to the amount of a million had been destroyed." (Alison's History of Europe, vol. v. p. 419.)

This was on the eve of emancipation, and indeed was caused by premature expectations of it which had been raised in the excitable minds of the negroes, and led to this terrible result—a remarkable instance of the facility with which the negro nature can be raised to revolt by representations of injustice calculated to operate quickly on their ardent temperament, and arouse in them feelings of resentment certain to explode into insurrection.

The great measure of emancipation, although no doubt it removed *one* exciting cause for insurrection, only substituted others; and it appears to be the general opinion of the best informed and most impartial authorities that, by reason of fatal mistakes in our legislation, it has rendered the condition of the colony more perilous in some respects than it was before.

The massacres in St. Domingo arose from causes common to the whole of the negro populations in the West Indies, whether enslaved or emancipated. These massacres, it will be observed, were *after* emancipation. The historian of the West Indies gives a more particular account of the horrors which resulted in St. Domingo from sudden emancipation; for, be it observed, these were the atrocities of freed not enslaved negroes:—

"I am now about to enter on the retrospect of scenes the horrors of

which imagination cannot adequately conceive nor pen describe. The inhabitants were called from their beds by persons who reported that all the negro slaves in the several neighbouring parishes had revolted, and were at that moment carrying death and desolation over the adjoining plain. The Governor and most of the military officers on duty assembled together, but the reports were so confused and contradictory, when, as daylight began to break, the sudden and successive arrival, with ghastly countenances, of those who had with difficulty escaped the massacre, brought a dreadful confirmation of the dreadful tidings. A party of the ringleaders seized a man and hewed him into pieces. The negroes on a plantation murdered five persons, one of whom had a wife and three daughters. These unfortunate women, while imploring for mercy from these savages on their knees, beheld the husband and father murdered before their eyes. For themselves, they were devoted to a more horrid fate, and were carried away captives by the assassins. The approach of day served only to discover new sights of horror. It was now apparent that the negroes on all the estates acted in concert, and a general massacre of the whites took place in every quarter. On some few estates, indeed, the lives of the women were spared, but they were reserved only to gratify the brutal appetites of the ruffians, and many of them suffered violation on the dead bodies of their husbands and fathers. The standard of the rebels was the body of a white infant, which they had recently impaled on a stake. The cruelties they exercised on such of the miserable whites as fell into their hands cannot be remembered without horror, nor described in terms strong enough to convey an idea of their atrocity. All the white, and even mulatto, children, whose fathers had not joined in the revolt, were murdered without exception, frequently before the eyes, or clinging to the bosoms, of their mothers; young women of all ranks were first violated by a whole troop of barbarians, and then generally put to death. Some of them were indeed reserved for the further gratification of the lust of the savages, others had their eyes scooped out, &c." (Bryan Edwards' History of the West Indies, vol. iii., p. 10—103.)

Then, narrating the efforts made to suppress the rebellion, the historian thus describes the harassing mode of warfare adopted by the insurgents, who *avoided* any encounter of the whites :—

"In these engagements the negroes seldom stood their ground longer than to receive and return a single volley, but they appeared again the next day; and though they were at length driven out of their entrenchments with infinite slaughter, yet their numbers seemed not to diminish; as soon as one body was cut off another appeared, and thus they succeeded in the object of harassing and destroying the whites by perpetual fatigue, and reducing the country to a desert." (Ibid., p. 102.)

Then, in conclusion :—

“To detail the various conflicts, massacres, and scenes of slaughter which this exterminating war produced were to offer a disgusting and frightful picture, a combination of horrors, wherein we should behold cruelties unexampled in the annals of mankind—human blood poured forth in torrents, the earth blackened with ashes, and the air tainted with pestilence. It was computed that within two months after the revolt first began, upwards of two thousand white persons of all conditions and ages had been massacred, and one thousand two hundred Christian families reduced from affluence to such a state of misery as to depend altogether for their clothing and sustenance on public and private charity. Of the insurgents, it was reckoned that upwards of ten thousand had perished by the sword or by famine, and some hundreds by the hands of the executioner, many of them, I am sorry to say, under the torture of the wheel, a system of revenge and retaliation which no enormities of savage life could justify or excuse.” (Ibid., p. 103.)

This, it will be observed, is stated, fairly enough, as *retaliation*, though retaliation not to be justified. They are mentioned as retaliatory atrocities for those first inflicted by the negroes; they are not narrated as if they were the unprovoked atrocities of those engaged in the suppression of the rebellion, as is done by the partizans of the abolitionists, who were the real authors of all these horrors.

Then the author goes on to notice that, so far from the rebellion having been caused by oppression, it occurred at the very time the Assemblies were considering means of amelioration and measures of emancipation. And he ascribes it, as Alison does, to the anti-slavery societies in London and Paris. He quotes some of the abominable excitements to massacre circulated by our own society among the negroes in our colonies. He says :—

“A short review of the conduct of these societies will serve not only to lessen the surprise which may be felt at the revolt of the negroes of St. Domingo, but also raise a considerable degree of astonishment that the enslaved negroes of the British colonies had not given them the example.” (As, indeed, the historian forgot to say, they had.) “In many of these writings, arguments are expressly adduced, in language which cannot be mistaken, to urge the negroes to rise up and murder their masters without

mercy. 'Resistance,' say they, 'is always justifiable where force is the substitute of right, nor is the commission of a civil crime possible in a state of slavery.' These sentiments were repeated in a thousand different forms, and in order that they might not lose their effect by abstract reasoning, a reverend divine in a pamphlet poured forth the most earnest prayers that the negroes would destroy all the white people, men, women, and children in the West Indies. 'Should we not,' he exclaims, 'approve their conduct and should we not crown it with eulogiums if they exterminate their tyrants with fire and sword! Should they even inflict the most exquisite tortures on their tyrants, would they not be excused in the moral judgment of those who properly value those inestimable blessings, national and religious liberty.' (Ibid., p. 110.) "The labours of the Society, as well as many of the most violent speeches in the British Parliament, wherein the whole body of planters were painted as a herd of bloodthirsty tyrants,* were explained to the negroes in terms well suited to their capacities, and suited, as might be supposed, to their feelings." (Ibid.)

If this shall seem extreme or incredible, let the reader consider a few extracts from one of the most approved works of abolitionist literature—a work lately quoted by the Lord Chief Justice, and from which he has evidently derived much of his inspiration—Mr. Montgomery Martin's "History of the British Colonies;" a very interesting and valuable work, full of excellent information, and written by a most excellent man, only a little onesided on this subject. In his zeal against slavery, he *actually excuses the worst horrors* perpetrated in St. Domingo :—

"The *very worst* part of the conduct of the blacks in St. Domingo in their struggle for their liberties, is *many shades less dark and diabolical* than that of the slave-dealer. . . . The outrages of men struggling for their lost liberties *have too much of virtue in them* to admit of any comparison with such acts as that of the slave-trader." (History of the British Colonies, published in 1834, Preface.)

The historian forgot that these were the atrocities of men who had already *achieved* their freedom, and were merely gratifying their savage passions. But fancy the degree to which excellent men must have had their moral sense per-

* Although at that time, as the pages of the historian and the West Indian statute books show, there were the most stringent measures for the protection of the slaves and the amelioration of their condition.

verted, to excuse such horrors ! These excellent persons see no harm in an insurrection of negroes, and it is thus that the historian speaks of the rebellion of 1760 in Jamaica:—

“The year 1760 witnessed one of those desperate insurrections which must ever characterise a population which includes bondsmen. The contest ended only with the total destruction of the greater body of the rebel slaves. Ninety white persons fell in the rebellion, and 400 rebel negroes were slain and 600 transported.” (Ibid.)

And then he mentions *only* the alleged atrocities of the planters, and says not a word of the atrocities perpetrated by the insurgents : this is a specimen of the abolitionist view of the subject ; it is always utterly one-sided, and you may read through the entire of their literature without discovering the idea that the negro is capable of insurrection, in *freedom* as well as in slavery, and that when his passions are aroused, he is a terrible and formidable foe to the whites.

The inhabitants of our West Indian colonies, but above all Jamaica, know too well the nature of a negro insurrection. If Mr. Eyre referred to a work very likely to be in the library of a West Indian colonial governor, and almost certain to be in the library of a governor of Jamaica—Sir Bryan Edwards’ “History of the West Indies,” he would find, under the head of Jamaica, everything that could naturally lead him to the conclusion that he might enforce martial law in circumstances of danger :—

“From the situation of this island, amidst potent and envious rivals, and the *vast disproportion between the number of white inhabitants and slaves*, it may be supposed that the maintenance of a powerful and well disciplined militia is among the first objects of the policy of the legislature ; and, accordingly, all persons are obliged by law to enlist, but this law, I doubt, is not very rigidly enforced. However, in times of actual danger, whether from revolt of slaves, or the probability of invasion, no troops could have shown greater promptitude or alacrity. In *such emergencies* the Commander-in-chief, with the advice and consent of a general council of war, may *proclaim martial law*. *His power is then dictatorial*, and all persons are subject to the Articles of War.” (History of West Indies, vol. i., p. 221.)

It is plain that the writer considered that martial law might be proclaimed *in time of danger*. And the author adds in a note :—

“Soon after the above was written (the author being at that time in Jamaica) the Governor, by the advice of a council, proclaimed martial law. This was in 1791, and it arose from a notion very generally prevalent in the island, that conspiracies and projects of rebellion were afloat among the negroes, in consequence of the disturbances in St. Domingo.” (Ibid.)

And we may easily imagine how a Governor in those days would have dealt with any one found to have been inciting the negroes to revolt. The historian narrates how, a few years later, in 1795, a bloody rebellion did break out in Jamaica, originated, be it observed, not by the enslaved negroes, but by the free Africans, the Maroons, of whom he says :—

“They pleased themselves with the hope of prevailing on the negro slaves throughout the island to join them, and, by rising in a mass, to enable them to exterminate the whites at a blow. They began tampering with the negroes on the numerous and extensive plantations, and on some of these the emissaries were cordially received.” (Ibid., vol. iii., p. 33.)

The historian continues :—

“By the advice of a council of war the Government *put the whole island under martial law*. The reader will see that resources of such extent and magnitude were not adopted solely in the belief that the Maroons alone were concerned. It must be repeated that the most certain and abundant proofs have been transmitted to the Commander-in-chief of their attempts to create a general revolt of the enslaved negroes, and it was impossible to foresee the result. The situation of the slaves under prevailing circumstances required the most serious attention. With the recent example before their eyes of the dreadful insurrection in St. Domingo, &c.” (Ibid.)

The circumstances, it will be observed, were very similar to those of the recent rebellion, except, indeed, that for several reasons the latter was infinitely the more formidable. The number of negroes on the island was *nearly*

double what it was in 1794; the number of whites less than *half*, and the military force not *one-fourth* part of what it was at the former period. Yet it was deemed necessary to keep up martial law for many months; and, *as the insurgents had been allowed to escape into the bush*, they were enabled to keep up a desultory but most harassing warfare on the whites.

“They established their head-quarters at a place in the interior of the country, of most difficult access. From this retreat, almost inaccessible to others, they sent out small parties. . . . At various places white people fell into their hands, all of whom were murdered in cold blood, without any distinction to sex or regard to age. Even women in childbed and infants at the breast, were alike slaughtered by the savage enemy; and the shrieks of the miserable victims frequently conveyed the first notice that the insurgents were in the neighbourhood.” (Ibid., p. 340.)

“It was evident that it would prove a work of greater difficulty than was imagined to stop the depredations which were daily and hourly committed by the horde of savages. Neither the courage nor conduct of the best disciplined troops in the world could always avail against men who, lurking in secret, like the tigers of Africa (themselves unseen), had no object but murder.” (Ibid., p. 342.)

Such would a negro insurrection be if ever allowed for a week to take root, so to speak, and plant itself in the bush. Such was a negro insurrection before emancipation; and the case of St. Domingo showed that there was as much danger of it, and as much horror of it, in a colony *where the negro population enormously preponderated*, and as great horror in it when it occurred. It must be remembered all through that the case in hand is that peculiar case of Jamaica, where the number of negroes is larger than anywhere except Hayti, and where the disproportion between the two races is far greater than in any other.

It would be a great mistake to suppose that emancipation, in such a colony as Jamaica, removed the danger of rebellion; in some respects it augmented the danger, from peculiar causes. The enlightened historian of Europe

says, and his opinion is confirmed by the highest and most impartial authorities* :—

“ The measure was unwise, premature, and has been attended with the most disastrous results. It is difficult to say whether the West Indian proprietors, the negro population in the island, or the mother country have suffered most from the change. It appears that the produce of Jamaica within three years after emancipation took effect decreased a third, and within ten years that of the whole West Indian islands had fallen off a half. But disastrous as the results of the change have been to British interests, both at home and in the West Indies, they are as nothing to those which have ensued to the negroes themselves. The fatal gift of premature emancipation has proved as pernicious to a race as it does to an individual. The diminution of the agricultural exported produce of the islands to less than half proves how much their industry has declined. Generally speaking, the incipient civilisation of the negro has been arrested by his emancipation. With the cessation of forced labour, the tastes and habits which spring from and compensate it have disappeared, and savage habits and pleasures have resumed their ascendancy over the sable race. The attempts to instruct and civilise them have, for the most part, proved a failure; and the emancipated African, dispersed in the woods, or in cabins erected amidst the ruined plantations, are fast relapsing into the state in which their ancestors were when they were torn from their native seats by the rapacity of Christian avarice. The savage was made free without his having gained the faculty of self-direction; hence the failure of the whole measure, and the unutterable misery with which it has been attended. In 1838 the Government was compelled to venture on the hazardous step of total freedom, which has completed the ruin of the West Indies.” (Alison's History of the West Indies, vol. v., p. 430.)

This indeed was anticipated at the time, and foretold by the best-informed persons, especially of Jamaica, on account of its peculiar and exceptional condition, by reason of its enormous black population on the one hand, and the vast amount of waste land on the other. Thus it was

* As, for instance, Lord George Bentinck and the present Premier, Mr. Disraeli, who, in his most interesting biography of that eminent and lamented statesman, says :—“ The history of the abolition of slavery by the English and its consequences would be a narrative of ignorance, injustice, blundering, waste, and havoc not easily paralleled in the history of mankind. It has ruined the colonies and augmented the slave trade” (p. 234). And Lord George said, in one of his letters : “ I don't think that when John Bull paid £20,000,000 to knock off their chains he meant to make idle gentlemen of the emancipated negroes; but this is what he has done.” (p. 342).

pointed out at the time that the great experiment would be of doubtful success owing to this and the consequent inability of the negroes to labour and their passion for land. It was stated at the time, says Mr. Martin, by a most philanthropic person :—

“The new order of things may probably succeed in the smaller islands where almost the whole of the land is in cultivation, but in Jamaica, where there is such an abundance of uncultivated land, and where such little labour is required, the negroes will never work for the paltry wages which the poor planters can ill afford to pay, and it will be found that they will, for the most part, prefer working for themselves.” (Ibid., p. 212.)

But here arose a great difficulty, that in the eyes of the negroes emancipation was worthless without *land*, and that as they had land free *before* emancipation, and had to pay rent for it *after* emancipation, their condition was in that respect worse than it was before. As Lord Grey stated in his *History of his Colonial Policy* :—

“During slavery, the negroes were maintained principally by the produce of *their own provision grounds*, which they cultivated in the time allowed them for that purpose by their masters. * * * Since in most of these colonies* land is so abundant that it can be had almost for nothing, these provision grounds could not therefore be considered as part of their wages.” (p. 55.)

That is to say, they had their provision grounds for nothing. After emancipation the impoverished planters of course demanded rent, not so much for the *sake* of the rent, as a means of getting the negroes to work. Lord Grey pointed out, in the work just quoted, that, as might have been expected, and had been expected, the negroes would not work any more than absolutely necessary, and no provision was made for this. Even had the great measure of emancipation been carried with the utmost wisdom, *it was* the opinion of the most acute observers that it would be pregnant with peril. That distinguished American statesman, Mr. Calhoun, told Mr. Gurney a quarter of a century ago :—

“The emancipation of the blacks in the West Indies was safe to the

* This is inaccurate ; it was so, however, in Jamaica.

white inhabitants, only because it was guarded by the strong hand of Great Britain ; that the two races were so distinct and opposite, that without the intervention of such a power, they could not be expected to live together as friends in the capacity of freemen ; that when the *blacks preponderate in numbers, the whites would be overwhelmed*, that when the numbers were even, there would arise interminable violence and strife." (Six Months in the West Indies, p. 196.)

The benevolent philanthropist to whom this was said of course thought it a mistaken prediction, though it has been to a great extent verified in Jamaica, on account of the peculiar difficulty of its position. *It is the only country* belonging to Europeans, in which the negroes largely, immensely preponderate. In Cuba the whites over-numbered the blacks, and were as 130,000 to 100,000. In no other colony is the number of blacks so large, and also so enormously in excess of the whites. And this disproportion between the races has gone on increasing ever since emancipation, both from the increase of the blacks and the diminution of the whites. A century ago the blacks were less than half as numerous, the whites more than double their present number. The blacks have more than doubled, the whites have become greatly reduced in numbers. Hence in no other country or colony are the blacks so numerous in proportion to the number of the whites. At the last census the blacks were about 450,000, the whites about 13,000. It is to be doubted whether there ever was such an enormous disproportion in the numbers of the two races. In St. Domingo, though the number of negroes might be as great, the disproportion is nothing like it. The danger arising from this disproportion between the races is greatly enhanced by their entire separation on the one hand, and their natural antagonism on the other. These again have been enhanced by the peculiar difficulties arising upon the land question.

The emancipated negroes, constitutionally indisposed to steady industry, and having, not unnaturally, a great distaste for anything like regular labour, sought to shun it

as much as possible, and to squat upon the land, the produce of which would, with hardly any exertion, afford them a support. This disposition, the inevitable tendency of which was, on the one hand, to drive them back into barbarism, and, on the other hand, to excite agrarian insurrection, was unhappily encouraged to the utmost by the professed friends who, ever since emancipation, had done all that was possible to inspire the negro with an aversion to labour, and a notion that they were entitled to land. Thus, two or three years after emancipation, a member of the philanthropic family of Gurney made a tour through the West Indies, disseminating everywhere the monstrous and mischievous notion that the "essence of slavery was anything like compulsory labour," and that the negro, in one way or another, was entitled to have land rent free; or that, at all events, the payment of rent was not to be enforced, or that labour was not to be enforced by making it a condition of the possession of land! He wrote *especially* of Jamaica, where, for the reasons already adverted to, the land question was important. He said:—

"It has been the unhappy lot of this colony to be much perplexed with the subject of rent, which was prematurely forced on the attention of the people, immediately after the date of freedom." (Six Months in the West Indies.)

What this meant was, as the context showed, merely this, that the planters said to the negroes who had produce-grounds on their estates, "Either work on our estates, or pay rent;" one should think a highly reasonable proposition. But the negroes wanted to have the produce-lands rent free as they had them in slavery; and also to be free to work, or not to work, as they pleased, and to work elsewhere if it suited them. And the whole object of this well-meaning but mistaken man was to *encourage* that notion in their minds, and to imbue them with the idea that anything like labour under contract, or condition, or, as he called it, compulsory labour, was equivalent to sla-

very, and that *even making it a condition of the possession of land* was making it compulsory, and equivalent to slavery! He went everywhere, all through the island, addressing large assemblies of negroes, and no doubt inculcating these monstrous and mischievous notions; for he avowed them in his book: and it is not too much to say, indeed, it can be clearly shown, that these mischievous exertions resulted in the ruin of the colony and remotely brought about the state of feeling which led to the recent rebellion. All through the work, it will be observed the writer objects to any mode of enforcing either rent or labour. The planters had tried to induce the negroes who resided on their estates to set off rent against labour, but the negroes having the notion that they were entitled to the land as before, rent free, objected to this, and their mistaken friend all through upholds their objection. He represented the negro as complaining *that rent was set off against his labour!* as if anything could be more fair (p. 160). So again he denounced the endeavour to enforce labour by making it a condition of the occupation of land, either rent free or for a reduced rent, as if anything could be more just. This, however, he called *compulsion of labour!* (p. 148). He wrote:—

“The peasantry of Jamaica are much too cognizant of their own rights and interests long to submit to this *new form of slavery.*” (Ibid.) “Every one must perceive that it classes under *slavery, the very essence of which is compulsory labour*” (p. 102).

And no doubt as these views were avowed in the book, they were inculcated through the island, and indeed the writer says so; that is to say, he inculcated everywhere the notion that the essence of slavery is compulsory labour, and that as labour enforced by contract or condition is “compulsory slavery,” so that all attempts to enforce labour, either by making it a condition of the occupation of land, or by setting off rent against wages, amounted to compulsory labour, and was therefore equivalent to sla-

very ! No one can doubt that views like these advocated by so influential a person, should be circulated eagerly through the island, especially by the native black teachers, of whom this excellent gentleman spoke in terms of deserved reprobation, and who, of course, could easily make use of these pernicious doctrines to arouse feelings of enmity between the negroes and the white proprietors, and here was the ancient feud between property and labour aggravated by all the animosities of race, and exasperated by all the angry recollections of slavery. Mr. Gurney wrote :—

“We were told (by a missionary) that part of his flock had been led off by an ignorant black teacher. There are said to be many such on the island, and we heard a poor account of their character and of the effect which they produce ; but their influence is trifling as compared with that of the missionaries, and as education spreads this will in all probability cease ” (p. 161).

In this the benevolent author was unhappily mistaken.

And it would seem that according to the opinion of the then Governor (whom he highly eulogises), the mischief was not confined to the *native* Baptists; for in 1840, at the very time when Mr. Gurney visited the island, the then Governor, Sir Charles Metcalfe, found it necessary to express very strong opinions as to the pernicious influence exercised by the Baptist missionaries. He wrote to the Secretary of State :—

“I am bound by my duties (he wrote) to inform your lordship, that in my opinion, the worst evil, which hangs with a menacing aspect over the destinies of this island, is the influence exercised with baneful effect by the majority of Baptist missionaries. It is the worst because it is the most irremediable. Other evils and difficulties may yield to time, which may also diminish the influence of the Baptist missionaries, or produce successors of a more Christian character ; but long after their influence has ceased, its pernicious effect on the disposition of the people will remain. I entirely renounce the opinion which I at one time entertained, that they had done more good than harm. The good which they have done would have been done without them. The evil is exclusively their own.” (Kaye's Life of Lord Metcalfe, vol ii., p. 27.)

And at page 407 of vol. ii. of Kaye's "Life of Lord Metcalfe," disturbances had arisen from the influence of some of these men, for the biographer writes :—

"Assuredly the teachings of the missionaries bore in due season, as I have said, the accustomed fruit, and soon it became Metcalfe's duty to report that serious disturbances had occurred, one at Lucca, the other at Falmouth.

"In the latter both the police and military were pelted by the mob, and many of them wounded by the missiles discharged by the excited populace. The Riot Act was read. The troops, who had acted with wonderful forbearance, were drawn up in line and received the word to load. Upon this the rioters dispersed. But the fever of excitement was not soon allayed. The most unseemly language denunciatory of all constituted authority was freely used, the Baptist missionary who had been the promoter of the strife being the most unscrupulous in his utterances."

Now it would be most unjust to allow it to be supposed that this was the general character of the English Baptist ministers; on the contrary, in 1852, Sir H. Barkly wrote in *favour* of their general character (although, indeed, it is to be observed that every Governor had done so at first), but it is plain that there were even among the Baptist teachers persons whose influence was mischievous. It must be manifest that with a population of the negro character, so excitable and inflammable, the constant exercise of influences of this kind, added to the continual irritation arising from the unfortunate land question, must have had a perpetual tendency to excite to insurrection. Accordingly it is not to be wondered at that a few years afterwards, Earl Grey found the colony ripe for rebellion.

The noble earl wrote thus :—

"The measure for the abolition of slavery is now generally admitted to have been unhappily defective, from its containing no provisions calculated to meet the altered state of society, and the want of adequate motive for labour," and "that in consequence the negro had become addicted to idleness and vice, and that the rising generation were more disposed to lawless and reckless courses than their elders." (Earl Grey's Colonial Policy, vol. i., p. 59.) "Even at that time there were rumours of rebellion among the negroes, and it turned out that these rumours were not without foundation.

Though there is a strong spirit of loyalty to the Crown among the negroes, and they are easily managed, if judiciously treated, they are, at the same time, ignorant, very credulous, and excitable, and capable when excited of the most reckless and dangerous conduct, entertaining, too, towards the white inhabitants of the island the feelings of hatred engendered by the recollections of slavery." (Ibid., i. 178.)

The causes, again, which had led to the insurrection were of long growth and operation, and widely spread and deeply seated in the whole character and condition of the negro race, insomuch that thoughtful statesmen had seen them in operation and almost foreseen the danger that had now arisen.

The rebellion was averted on that occasion, but the causes still rankled, and produced their fatal result a few years later. The evidence taken before the Royal Commissioners showed that for *years past a gradual change for the worse*, quite corresponding with Earl Grey's prognostications, had been observed among the negroes. These causes, which had been at work before Mr. Eyre had assumed the government of the island, would, it is manifest, on the one hand, greatly tend to produce a rebellion, and would infinitely enhance the *danger* arising from any insurrection, giving it a terrible tendency to spread with rapidity, on account of the community of feeling and the sympathy of race; so that even a *local* insurrection *with a general object*, that object the liberation of the island, and the extirpation of the whites, would be certain to have a tendency to spread with rapidity. The crisis too was favourable to the development of the feeling. The liberation of the black race in America, consequent upon the war between the Northern and Southern States, a revolution in Hayti which was then going on, the presence of refugees from Hayti in the colony with arms and ammunition,—all these circumstances combined to render any insurrection terribly perilous. The evidence before the Commissioners on the one hand clearly connected the rebellion with these long-standing, wide-spread, deeply-

seated causes, and on the other hand connected it also with this dangerous conjuncture of circumstances.

The excellent but mistaken man whose visit to the West Indies has been already alluded to, had permitted himself to be led by his prejudices against the planters to excuse or palliate rebellion among the negroes, and he thus wrote of that rebellion of 1831, which the great historian of Europe described in such striking terms, and which Mr. Montgomery Martin, the historian of the British Colonies, described as terrible :—

“The parish of St. James’s was the principal seat of the rebellion (*falsely so called*) shortly before emancipation. The long-continued acts of provocation and oppression to which the negroes had been exposed, drove them at last into a state of irritation, not without instances, I presume, of crime and violence, but there can be no doubt that the flame was fanned by a violent party on the other side, with a view to impede the march of approaching freedom.” (Six Months in the West Indies, p. 139.)

As if the planters had fanned the flames which *fired their own estates*. All this it need hardly be said was entirely untrue; the fact being, that ameliorations were being introduced with a view to emancipation, and as Mr. Alison states, the rebellion arose from the blacks being told by their religious teachers that their emancipation had been granted and was delayed by the planters. But the object of the above extract is to show, in connection with what follows, how far the imprudence of the professed friends of the negro tended to excuse and excite rebellion, and how deeply seated were the causes which led to the rebellion. When a man so excellent as Mr. Gurney could permit himself to write in such terms, it can easily be imagined how others would better the example, and there is conclusive proof that this sort of teaching brought about the late rebellion. And this has a close bearing upon the present question, for it was a near connexion of this gentleman who was the first and most prominent assailant of Mr. Eyre, obviously from a natural disposition to

depreciate the magnitude of the danger for which their friends were so deeply responsible, and therefore to denounce as excessive the measures necessary for its suppression. It appeared before the Commissioners that books written in the spirit of the above had been circulated among the negroes, and of course had tended to bring about a state of feeling among them which would predispose them to rebellion. It may be here convenient to pause and consider, in the event of a rebellion breaking out, what light would the Governor of a colony derive from history, from text-books, or from statutes upon the subject.

If the Governor referred to a work likely to be in the library of any English gentleman, he would find it laid down as clear that in time of *actual* rebellion, martial law was justified at common law apart from any statute.

"There may, in times of pressing danger, when the safety of the many demands the sacrifice of the legal rights of the few, there may be circumstances that not only *justify*, but compel the temporary abandonment of constitutional forms. It has been usual for all Governments during an *actual rebellion* to proclaim martial law on the suspension of civil jurisdiction." (Hallam's Constitutional History, vol. i. p. 240.)

From this the Governor would gather that a statute would only be necessary to allow of the exercise of martial law in time of *danger* of rebellion, either *before* it had broken out, or after its *outbreak* was suppressed; and if he looked into the Jamaica Statute Book he would find a statute, sanctioned by the Imperial Government so lately as 1845, expressly authorising martial law; not merely during *actual* or open rebellion, but during the existence of *danger* of rebellion. That statute recited—

"That the appearance of public *danger* by invasion or otherwise,* may sometimes make the imposition of martial law necessary; yet as from experience of the mischief and calamities attending it, it must ever be considered as amongst the greatest of evils."

* A previous statute of Charles II. was couched in similar terms, and defined martial law as the "Articles of War."

And then it enacted :—

“ That martial law shall not in future be declared or imposed but by the opinion and advice of a council of war, and that at the end of thirty days it shall determine, unless continued with the advice of a council.” And further, “ That the Governor shall be authorised, with the advice and consent of a council of war, in the event of a disturbance or *emergency of any kind*, to declare any district under martial law.” (Jamaica Statute Book, 9 Vict. c. 96.)

Now it would be clear enough from this that the Government of this country, when in 1845 it sanctioned this Jamaica Act, intended that, upon the occurrence of any *outbreak*, or the appearance of any *danger* of rebellion, martial law should be declared, and exercised, as *long as the danger continued, i.e.,* not merely *when* an outbreak occurred, or until the *outbreak* was suppressed, but even when there appeared to be universal danger of an outbreak, and at all events when an outbreak had actually taken place, as long as the *danger* continued, and not merely until the *outbreak* was over. It would naturally occur to the Governor that otherwise there would be no necessity for the Act at all, since by the *common* law, martial law was authorised during actual and open rebellion; and a statute could only be necessary to authorise it *before* or *after* actual or open rebellion. And if he looked into the history of this country, not, indeed, of England, but of Ireland, even since the beginning of the century, he would find ample confirmation of this impression. If he looked to the Imperial statute-book so lately as the year 1805, he would find Parliament drawing a clear distinction between a *rebellion* and its open *manifestation*; and, because there was a doubt as to the legality of martial law, except in time of *actual* and *open* rebellion, carefully authorising it in time of *danger*. In that year Parliament recited :—

“ That a treasonable and rebellious spirit of insurrection now exists in

* The intermediate pages are cancelled in this edition.

Ireland, and hath *broken* out into acts of open murder and rebellion, and persons who may be guilty of acts of cruelty and outrage in furtherance and immediate prosecution of such insurrection and rebellion, and who may be taken by His Majesty's forces to be employed for the suppression of the same, may seek to avail themselves of the ordinary course of the common law to evade the punishment of such crimes committed by them, whereby it became necessary for Parliament to interfere."

Here again it is clearly recognised by the Imperial Parliament, that *rebellion* is quite distinct from the acts of open outrage or rebellion which may be committed in furtherance of it; and further, that the ordinary course of the common law would enable the persons guilty of such acts to evade the punishment of their offences. And what did Parliament think proper under such circumstances, and in order to *prevent* rebels from using the course of the common law in order to evade their punishment? *Martial Law*. For the statute proceeded to provide—

"That it shall be lawful for the Lord-Lieutenant or other chief Governor of Ireland, from time to time during the continuance of the *rebellion*, whether the ordinary courts of justice shall or shall not be open, to issue his orders to the officers commanding the forces, to take the most vigorous and effectual measures for suppressing the insurrection *and rebellion* which shall *appear* to be necessary for the public safety, *and for the safety and protection of the persons and properties of His Majesty's peaceable and loyal subjects, and to punish all persons acting, aiding, or in any manner assisting the said rebellion, according to martial law*, either by death or otherwise, as to them shall seem expedient for the punishment and suppression of all rebels in their rural districts, and to arrest and detain in custody all *persons engaged in such rebellion, or suspected thereof, and to cause all persons so arrested to be brought to trial in a summary way by court-martial for all offences committed in furtherance of the rebellion, whether such persons shall have been taken in open arms against His Majesty, or shall have been otherwise concerned in the rebellion, or in aiding, or any manner assisting the same, and to execute the sentences of all such courts-martial, whether by death or otherwise.*" (43 Geo. III., c. 117.)

Now it matters nothing for the present purpose whether this would or would not have been legal *without* statutory authority, because the purpose at present is to consider the subject not merely with reference to bare legality, but

propriety. It may however be observed, as to the question of *legality*, that if the statutory enactment *was necessary* it was because it expressly provided for the exercise of martial law when actual rebellion was at an end and the ordinary course of justice was not interrupted, and no one has ever said that *this* could be done at common law, while on the other hand the statute itself distinctly recognised the prerogative of the Crown to exercise martial law in time of actual rebellion :—

“ Be it declared and enacted that nothing in this Act shall be construed to take away, abridge, or diminish, the acknowledged prerogative of the Crown for the public safety, to resort to the exercise of martial law against open enemies or traitors.”

But the point at present to be considered is what inference the Governor of a colony might fairly draw from the language of this Imperial Act, especially coupled with a local Act in force in the colony, and expressly allowing martial law in time of *apprehended* rebellion. He would find a marked distinction drawn between open or actual rebellion, and *rebellion*. He would find it solemnly recognised by the Imperial Legislature that the Crown by prerogative could exercise martial law in time of actual rebellion. He would find further, that as the state and spirit of rebellion might exist for some time after acts of open rebellion had ceased, and as the object was the entire suppression of rebellion, the Legislature considered it right and proper that martial law should continue to be exercised for some time *after* open rebellion had ceased to exist, that they *expressly provided that it should be so continued for six months after open rebellion was at an end*. That was the precise and express purpose of this Imperial Act. It was passed at the end of July, the month in which the outbreak took place, and it authorised this continuance of martial law until *six weeks after the commencement of the next Session of Parliament*. (Adolphus's History of England, vol. vii., p. 742.)

The history of that measure is most remarkable, and shows with what deliberation Parliament enacted it, with the express object of allowing martial law *after* open rebellion was over, and *although* the courts of law were sitting and the course of regular justice was not interrupted. It arose out of the case of Wolfe Tone, of which the Lord Chief Justice, unconscious, it is to be supposed, of its issue, made so much. Wolfe Tone was taken armed and fighting, and tried by court-martial under martial law in Dublin, and he was convicted. The Court of King's Bench in Ireland, which was sitting at the time, was moved for his discharge on the ground that his trial was illegal. Two points were taken, one, that as the prisoner had not held a commission in the King's army he could not be tried under martial law (a point perfectly absurd, seeing that a rebel in arms against his sovereign is, as a soldier, liable to martial law, or the *law of war*), and further, *that martial law must cease when the ordinary courts were sitting*, which was no doubt a sound view of the law, and upon that the court granted a *habeas corpus*. But what followed? This the Lord Chief Justice quite omitted to notice or to mention. The result was that the Imperial Parliament, on the next occasion of rebellion, passed an Act expressly to *alter* that, and in order to allow of the exercise and continuance of martial law *after* open rebellion had come to an end, and although the ordinary courts were sitting, which no doubt would strictly be illegal at common law. That is to say, the Imperial Parliament deemed it so right and proper that for the purpose of the more thorough suppression of rebellion, by means of prompt and summary execution of military punishment upon those who had been engaged in it, that it passed an Act expressly to allow of it. And this not in a remote and distant colony where the rebellion had the sympathy of a whole race, enormously outnumbering the loyal, but in the sister island, a country close at hand, with a powerful standing army, supported by the whole strength of the empire, and in a

country where the disloyal, however numerous, were in a *minority*, and greatly in the minority, and the great bulk of the people were loyal. Nevertheless, the Imperial Parliament considered it right and proper that martial law should be continued for the express purpose of punishing rebels *after* open rebellion had ceased.

It matters not a straw for the present purpose, as already observed, whether or not this would have been legal *without* a statutory enactment, for two reasons already pointed out: first, that the scope of these observations is *not* bare legality, but propriety; and next, because in fact *there was just such a statute in force in Jamaica*. For it has strangely enough escaped all observation, that the scope of the Jamaica Act was to allow of martial law, *not* merely in time of *actual* rebellion, but in time of *apprehended danger* of it. That it was *strictly lawful* under that Act to continue the exercise of martial law after *actual* rebellion was at an end, and for so long as the *danger* of it appeared to exist. But the point to be observed is, that the Imperial Parliament had expressly declared in the statute above quoted, that it was right and proper that martial law should continue to be exercised for six months *after* open rebellion had ceased, and that it expressly declared that by martial law it meant the punishment of all persons who had been engaged in the rebellion, whether or not they were taken in open arms. Would not Mr. Eyre reasonably enough have inferred, from the language of this statute, that he could not be wrong in concluding that martial law in *his* case meant the same thing, or in continuing such an exercise of martial law for *three weeks** after *open* rebellion had ceased? And there is this particularly to be observed, that Parliament expressly assigned, as a *reason* for the continuance of martial law *after* open

* Only three weeks. For on the 21st October the rebels *met the troops in the field*—(a fact strangely overlooked, though distinctly stated in the Commissioners' Report), and martial law ended on the 11th November, just one month from the *original outbreak*, and less than three weeks after armed resistance ceased.

rebellion was at an end, that the object was the punishment of those who had been engaged in it, and that they might by the ordinary course of law *evade* that punishment ; that is to say, by the strict precision of allegation or of proof, which in courts of law is required, but which are rather obstructive of justice than of its essence. For as a Lord Chief Justice of the King's Bench had said two or three years before :—

“The natural leaning of our courts is in favour of prisoners ; and in the mild manner in which the laws of this country are executed it has rather been a subject of complaint by some, that the Judges have given way too easily to mere formal objections on behalf of prisoners. Lord Hale himself, one of the greatest and best men who ever sat in judgment, considered this extreme facility as a great blemish, owing to which more offenders escaped than by the manifestation of their innocence. We must, however, take care not to carry this disposition too far, lest we loosen the bands of society, which is kept together by the hope of reward and the fear of punishment.” (Lord Chief Justice Kenyon, *Rex v. Suddis*, 1 East's Reports, 314.)

Those words were uttered by the Lord Chief Justice of the King's Bench, in the year 1801, in a case relating to the sentence of a regular court-martial in a colony, which was complained of as not being according to the common law, and the Lord Chief Justice said :—

“We are not now sitting as a Court of Error, to review the regularity of the proceedings ; nor are we to hunt after possible objections.” (Ibid.)

We have lately seen a Lord Chief Justice who, even in a case of court-martial under martial law, would insist upon scrutinising it as closely as if he *were* “sitting in a Court of Error, to review the regularity of the proceedings,” and as if he *were* “to hunt after possible objections.” But such was not the view of the Lord Chief Justice of his court in a former time ; and two or three years after the above words were uttered from the judgment seat, Parliament passed an Act expressly to provide that rebels

should be tried by martial law, for the very reason that they might otherwise use the ordinary course of the common law to evade punishment, that is to say, might get off upon technical objections. And that this was so, was so well understood, that a learned historian, after stating the passing of the Act, went on thus :—

“The Irish Government were enabled to seize and secure great numbers of persons active in the insurrection ; and the proof against them being clear and indisputable, the proceedings were *not* founded on any recent or extraordinary power, but according to the usual forms and practice of the law. Judges sat by virtue of a special commission, and true bills were returned against twenty persons for *high treason*. (Adolphus’s History of England, vol. vii., p. 743.)

Plainly implying that if the proof had not been clear and indisputable so as to support an indictment for high treason—and thus secure capital convictions at common law—the parties would have been tried under martial law for the offence of having aided in the rebellion, which by martial law would, as the statute itself implies, be a capital offence. The statute itself plainly expressed that this was the intention of the Legislature. With reference to the exercise of martial law in Ireland, a judicious historian remarks :—

“Much indignation was expressed in the debates at severities exercised by the military, which were not denied, but explained and vindicated. In fact, the country was by the acts of the disaffected brought to a state in which the delay and forbearance, by which power can be restrained in ordinary times, would have amounted to a base desertion of the duty by which Government is bound to protect the peaceable and well-disposed against violence, outrage, plunder, and assassination. When the means by which these malpractices are to be carried on are a mixture of reckless audacity with profound art and cunning, the measures necessary to prevent evil and obtain disclosure must be rapid, strong, and effectual. Complaints will certainly arise from the exercise of them, but they must be judged, not upon abstract or general principles, but according to the circumstances by which they are impelled.” (Adolphus’s History of England, vol. vii., p. 50.)

In those debates in the Imperial Parliament, it appeared not to be considered by any but party opponents, that the

Lord Lieutenant was answerable for the excesses of the troops. It was the Commander-in-chief on whom the responsibility devolved of checking them, and he it was who took measures and issued orders for the purpose. (Ibid., 51.) The historian states what we all know, that there were terrible excesses, caused, as Sir Ralph Abercrombie said, *by want of due military discipline*, and it never appears to have occurred to any one that the Lord Lieutenant was answerable. The Lord Lieutenant at that time was *Lord Camden*, and no stain has ever been deemed to rest on his name in consequence of these excesses, Yet the excesses had *continued for several months** It is true that after they had been disclosed, a new Lord Lieutenant, Lord Cornwallis, instructed by the experience so unhappily acquired by his predecessor, took steps to avert them, but still exercised martial law with great severity. The historian says :—

“This brave and distinguished nobleman, whose experience enabled him to fix a just limit to punishment in the way of retaliation without endangering the ascendancy of the cause he was deputed to support, began his rule by curbing the power too generally possessed and too violently exercised by courts-martial. Their sentences were revised, suspended, or superseded, as justice required ; but this lenity did not degenerate into weakness, *the really guilty were duly punished, and in great numbers*. While the rebellion was continued, the sword of justice was freely, though not indiscriminately, employed ; but as soon as the times seemed to permit, the Lord-Lieutenant issued a proclamation offering to all who should surrender, protection.” (Adolphus’s History of Ireland, vol. vii., p. 67.)

But this was not until martial law had been in force for months, and it was still continued for some time after actual insurrection was at an end. (Plowden’s “Historical Review of the State of Ireland,” vol. ii. p. 774.) The historian describes at great length how the excellent intentions of the Viceroy were defeated by the spirit of revenge which had been aroused by the rebellion ; and though this led to great excesses, he nowhere ascribes the blame to the

* From March till June.

Lord Lieutenant. So Mr. Massey, in describing the same sad excesses, ascribes the blame to the military commander, not to the Lord Lieutenant, and his account is indeed headed "Military Tyranny." (History of England, vol. iv., p. 305.) Or, if any blame was attributed to the Government, it was in committing the exercise of martial law to the yeomanry instead of the regular military, and indeed that was the real cause of the terrible excesses that were committed :—

"It would have been some mitigation of this terrible system of repression had it been carried into effect by a regular military force, disciplined to the usages of war, and free from the passions of an infuriated party, but the Government thought fit to place arms in the hands of the Protestant yeomanry, who were suffered to assume the insolent badge of Protestant ascendancy." (Ibid., 301.)

This was the real cause of the atrocious excesses which ensued, and which were not the natural results of martial law, but rather of the infernal spirit of religious rancour. Indeed they were rather the reverse of martial law, of which the essence is *military* rule. And accordingly, when two or three years afterwards, rebellion again broke out, the Imperial Parliament, so far from *preventing* martial law, passed a special act to provide for its *extended continuance*, only putting it under *military* authority.

Rightly or wrongly, the Governor considered that the very essence of martial law consisted in the summary trial and execution of men who *had* taken part in the rebellion, which of course implied that the trials would take place after the suppression of actual insurrection. And that this view certainly was in accordance with prevailing notions on the subject can be shown by reference, not merely to law books but to the most standard works of history. Thus, in Mills's "History of British India," vol. i., p. 58, he would find it written :—

"In 1624 the Company applied by petition to the king for authority to punish their servants abroad, by martial as well as municipal law. It

appears not that any difficulty was experienced in obtaining their request, or that any parliamentary proceedings for transferring unlimited power over the lives and fortunes of the citizens, was deemed even a necessary ceremony."

And then afterwards an instance is given of its exercise :—

"In 1674, a mutiny, occasioned by retrenchments, but not of any serious magnitude, was suppressed at Bombay. In trying or in executing the ringleaders, the Company exercised the formidable powers of martial law." (Ibid., p. 113.)

This it is plain was *after the mutiny was suppressed*. So if he or his legal advisers turned to the Law Reports most likely to be found in a colony—the Reports of the Privy Council cases on appeals from India and the colonies—he would find so able an administrator as Mr. Elphinstone writing thus, in his instructions to a military officer in charge of a newly-conquered territory :—

"When a village has once submitted, any practices in favour of the enemy must be punished as acts of rebellion by martial law. The Commander-in-chief at Poonah will be directed to assemble a court-martial for the trial of such persons as you may think fit to bring before it, and to inflict capital punishment immediately on conviction. The same course must be adopted with regard to persons who conspire against our Government, and likewise with all banditti. *I particularly call your attention to the necessity for inflicting prompt and severe punishment on persons of this description.* Prisoners taken from the enemy's troops must, for the present, be regarded as *regular* troops, but parties sent to plunder the country are in all cases to be considered as freebooters, and either refused quarter, or put to death after a summary inquiry, when there is any doubt of their guilt. All *other crimes* you will investigate according to the forms of justice usual in the country." (Elphinstone *v.* Bedrechund, 1 Knapp's Privy Council Cases, 320.)

So that, according to the view of this wise and able administrator, martial law, even in a country not *actually* but only *recently* the seat of war, authorised, and indeed called for, the summary execution, not merely of rebels, but plunderers or marauders, and this although the

country was quite subdued and courts of justice sitting ; for the very point decided by the Privy Council was, that a seizure made by the authorities was to be regarded as a *hostile* seizure, because made, if not while war was raging, at all events while it was so recent (if not *flagrante* yet *non dum cessante bello*). So that it could not be the subject of civil suit before the ordinary tribunals, it being held —

“ That the circumstances that at the time of the seizure the city where it was made, had been *for some months previously in the undisturbed possession of the Government, and that courts of justice were sitting in it for the administration of justice*, did not alter the character of the act.” (Ibid.)

Both these works were published in 1830, and at that time a rebellion took place in Jamaica, when martial law, under the above understanding of it, as authorising and calling for the summary execution of rebels *after the rebellion was subdued, with a view to its entire suppression*, was carried out, with no expression of disapproval on the part of the Government or of Parliament ; and so in the subsequent cases of Demerara, Cephalonia, and Ceylon ; and although it was truly stated by Mr. Forster, in a debate upon the present case, that in those cases the number of executions was small as compared with the number in Jamaica on the last occasion, yet he failed to observe, on the other hand, that they were purely *political* rebellions, and not in the least having the formidable character of a war of *race*, of a rebellion for the purpose of the extirpation of the English inhabitants ; nor were they commenced with a frightful massacre, nor attended with any attempts at wholesale slaughter of Europeans : in short, they were nothing resembling the recent rebellion in Jamaica.

Again, Mr. Eyre would naturally advert to former cases of martial law in the colonies, especially in cases of negro insurrection, or native revolts, and would find plenty of precedents, all supported by eminent legal authorities, and sanctioned by Parliament. There was the case of Demerara, in 1823, as mild a case of negro insurrection

as could have occurred. It was only local, and was suppressed in a few days.

"Thus success put a *complete termination* to the revolt. During its continuance the western district of the colony remained perfectly tranquil. Courts-martial were held for the trial of the prisoners, and many of the insurgent slaves were executed. From the evidence given upon the trials, there was reason to believe that the object of the conspiracy did not go further than, by taking temporary possession of the estates, to compel the promulgation of those regulations in their favour, which they believed to have been made. (Annual Register, 1823, p. 137.) There was no burning of buildings, nor any personal violence, except where resistance was made to the delivery of fire-arms, in the course of which, it *was said*, three overseers were killed." (Ibid., p. 135.)

So scarcely any lives were taken in the rebellion, and the *object* was not the extirpation of the whites, but only a modification of slavery, yet

"The vengeance obtained by the execution of slaves was not deemed sufficient."

And Mr. Smith, a missionary, was tried by court-martial two months after the insurrection was suppressed, for supposed complicity in it, and convicted and sentenced to be executed. The sentence was set aside, for there was not a shadow of proof that he had the slightest intimation of the insurrection till the moment it broke out, *and then he interfered to suppress it.* (Ibid., p. 177.) So it was a most extreme case, apparently, of conviction *without* evidence, but *against* evidence. And Mr. Brougham brought the case before Parliament. Yet he admitted the *legality* of martial law, and its *nature* as military rule. He admitted that the proclamation of martial law placed all men under it, because it put them all in the position of soldiers; and he also admitted that it could authorise trials by court-martial for acts committed *during* the rebellion, or in bringing about the rebellion; but he took this narrow ground, that the charge upon which Mr. Smith was tried related to his conduct

before the proclamation of martial law, and even this view he based upon the ground that it was not pretended that Mr. Smith had any *idea of a revolt at all*, or had ever used language calculated to produce it; and he founded his notion chiefly upon the broad ground, that upon the evidence not only did it *not* appear that Mr. Smith was guilty, but that it appeared most plainly that he was *innocent* :—

“The first charge was that he promoted discontent among the slaves, intending thereby to excite revolt. The court-martial found him guilty of the *fact*, but not of the intention, thereby, in common sense and justice, acquitting him.”

That is to say, they did not find that he had used any language *calculated to incite to revolt* or insurrection. The charge was only of promoting discontent, which was far too vague for a capital charge, especially as by expressly *negating* the intent, they found in effect that there was no use of language *calculated to excite to revolt*, from which the intention would be inferred.

“The second charge was that he consulted with the chief of the rebels concerning the intended rebellion, but this was abandoned for the next. The third charge was that he previously knew of the intended revolt, and did not communicate his knowledge to the proper authorities, on which he was found guilty, and it was upon this the discussion chiefly turned. And Mr. Brougham contended that the conviction was wrong, because a man cannot be capitally convicted by the law of England for such an offence.”* (Annual Register.)

Now, Mr. Tindal, afterwards Lord Chief Justice, maintained with immense learning that the conviction was legal, or that, at all events, there was nothing so grossly illegal in it that it was censurable. He said :—

“Before the House could pronounce an opinion that there had been a

* This view was contrary to a decision of the Court of King's Bench, which had held that a court-martial abroad, in a discretionary case, is *not* bound by the law of England. *Rex v. Suddis*. (1 East's Reports.)

gross violation of law in the proceedings of the court-martial, it must found such an opinion upon one of these grounds, either the measure of punishment inflicted must have been too heavy, or the Court must have been without jurisdiction, or the conduct of the Court must have been partial and unjust. He conceived *the Court was competent to the performance of the duties imposed upon it, and to award in this case the punishment of death.*"

And this Mr. Tindal maintained upon the ground that, under martial law, the courts were not restricted in their sentences to such as could be imposed according to the law of England, but might prove the law of the colony, or military law.

"The laws of Demerara were founded on Dutch law; the laws of Holland were derived from the old Roman law; and no man would hesitate to admit, that by the ancient civil law the punishment of death was inflicted alike upon persons who, knowing of its commission, concealed that knowledge." (Ibid.)

And Mr. Tindal quoted other authorities to show that a person concealing high treason was liable to the punishment of death, although he had no participation in the criminal act. He might have quoted the Mutiny Act, which expressly makes such an offence capital. The important point is, that the whole of his argument assumed that *martial law meant a different law from ordinary law, and superseded it.*

"He agreed that, as a court-martial under the Mutiny Act, it was only the proclamation of martial law which could justify it. But the proclamation of martial law at once superseded all civil process, and made it necessary that some other courts should be substituted in its stead. It was asked whether it was to have *ex post facto* operation, and whether under it all bygone offences were to be tried? Certainly not. It would not be lawful to try an offence committed at any previous time, where it had a distinct and separate character from the circumstances which occasioned the proclamation of martial law. But here the case was different. As Mr. Smith was charged with a guilty knowledge of the meditated rebellion, was it not too nice and subtle a distinction to say that it was a bygone offence, and not cognizable by the court-martial, there being then, *under martial law*, no other court by which he could be tried?" (Ibid., p. 94.)

The Attorney-General pursued a similar line of argument; and the name of the Attorney-General was Copley. And a great statesman, Mr. Canning, took the same view. Morally exonerating Mr. Smith, he still maintained that his conviction was strictly legal.

“Military law, or any other law which takes the safety of the community under its protection, is not at liberty to indulge these finer feelings. We cannot, in administering justice, and in consulting the safety of the community, soften down the language of the law, and call a suspicion delicacy, and concealment an honourable fidelity. If the State is to be saved, it must be rather by the practice of harsh duties than by the indulgence of romantic feelings.”

The House of Commons by a large majority affirmed the views of the Government, supported as they were by the arguments of Copley and Tindal. And what inference would the Governor of a colony naturally draw from these arguments and that result? That martial law was allowable in rebellion; that it was military rule; that it established a different law and a different jurisdiction from ordinary law and ordinary jurisdiction; that it authorised sentences more severe than ordinary law, that it allowed even of a capital sentence for mere concealment of a rebellion; that it authorised trials not only of those who were taken in arms, or had borne arms in the rebellion, but of all who had aided or encouraged it; and, finally, that its execution might properly be continued till months after the cessation of actual resistance or open rebellion.

But still stronger was the case of Ceylon, in which the Governor would find his view confirmed by the authority of the eminent constitutional statesman at the head of the Government, Earl Russell, of the Secretary for the Colonies, Mr. Cardwell, and of the present *Lord Chief Justice*, who at the time the Ceylon case was discussed in Parliament was Attorney-General. If the Governor looked into a work very likely to be in the library of a Colonial Governor, Earl Grey's able and interesting “History of the Colonial Policy of Earl Russell,” he would find on the occasion of a mere

political rebellion in Ceylon, *in which, as he says, the people at large had no interest*, and in which all that occurred was, that a number of men assembled in arms and *drove away* a magistrate, and plundered various buildings, without any attempt at massacre or murder, yet as if it had been *allowed* to go on, it would have become serious, martial law was properly declared, and exercised for *eleven weeks after the outbreak was put down* :—

“Though the people at large had no real interest in the success of the attempt, they were at the same time so ignorant, so easily led by disaffected chiefs and priests, and so numerous, while the force at the disposal of the local government was, in comparison, so exceedingly small, and the nature of the country and its extent were so unfavourable to military operations, that the danger when the rebellion broke out was most serious, and if it had not been crushed at once it would, in all probability, have led to a protracted and doubtful contest.” (Ibid., p. 184.)

Here Mr. Eyre must recognise many of the grounds and reasons which he assigned for his own recourse to martial law—with this difference, indeed, that in the case of Jamaica, they were all tremendously enhanced. The causes of this rebellion were such as to interest the whole negro population in its success; their passions were excited; it had commenced with a massacre, and was attempted to be carried on by murder; the number of troops was much smaller—1500 in Ceylon, scarcely 1000 in Jamaica: every circumstance enormously enhanced the danger in the present instance. But what would he read in Earl Grey’s book :—

“In these circumstances Lord Torrington acted with vigour and decision. He proclaimed martial law in the disturbed districts, he made arrangements with the Major-General who commanded the troops for placing as large a proportion as possible under the orders of the commandant. The commandant, and the officers under him, acted with no less vigour, and in a very few days all open resistance to the authority of the Government was at an end.” (Ibid., p. 185.)

Yet what followed? Martial law was exercised for eleven weeks, and Earl Grey says :—

“Eighteen of the most guilty of the rebels were sentenced to death by courts-martial, and executed, and minor punishments were inflicted upon a considerable number of others. These decided measures, and the prompt example that was made of the ringleaders, produced the desired effect—tranquillity was completely restored. Many lives and much misery were saved by this speedy re-establishment of order.” (Ibid., p. 185.)

Now here Mr. Eyre would find the authority of this great constitutional statesman in favour of the execution of martial law *for ten weeks after all open resistance was at an end*; and for the express purpose of making *examples*, and awing the rebels by their military execution. Mr. Eyre would certainly never gather from this the idea of maintaining martial law in force, but not executing it; nor the idea that its execution was to be terminated when open resistance was at an end. Moreover, he would remember, if he had read the debates and reports upon the case, that the noble Earl had very much understated it; that the numbers mentioned as tried by court-martial were only those mentioned in the official returns; and that it was stated, and not denied, that executions went on “by the score,” long after entire tranquillity was restored, and that the trials did not commence until about 200 had been slain by the sword—a mere mob, without any real power of resistance to regular troops; and that it was stated in Parliament that 380 persons, altogether, were slain. And all this in a mere political rising of a small body of the people, without any disposition to murder or massacre; without anything really formidable or alarming, or the feeblest possible appearance of a rebellion; *without a single life being taken* by the insurgents. It was officially admitted that after a large number had been slain in the field, about 64 were executed or otherwise suffered punishment, and nearly twenty of them put to death by court-martial. He would not gather from this that when the insurrection had excited the passions of the whole of an enormous black population, and commenced by a wholesale massacre, and was carried on by means of murder,

and with the avowed object of the extirpation of the whole of the white population, it could be deemed excessive to execute by court-martial less than one-tenth of those who had taken an active part in the insurrection. If he looked into the debates on the subject he would find, on the contrary, that the whole case against the continuance of martial law was based upon this: that it was *not* a murderous rebellion, and Mr. Gladstone urged this strongly:—

“If there was a rebellion, it was not a vindictive, atrocious, or murderous rebellion. Loss of life caused by the rebels there was none. We are upon the execution of eighteen men after the suppression of the rebellion, *in which not one life was taken.*”

“After the disturbances had been suppressed, and when the country was quite quiet, the Supreme Court was appointed to hold a special session in the town of Kandy for the trial of persons engaged in these disturbances. Simultaneously with the appointment of the Supreme Court to hold these sessions, courts-martial were also appointed to assemble in the towns of Kandy, Konegalle, and Natelle, for the trial of persons, many of whom were accused of treason. The officers were told that men who were guilty of plunder were rebels and ought to suffer death.” (Hansard's Debates, vol. 117, pp. 210, 218.)

So that martial law was kept up actually at the same time as the ordinary administration of justice.

And then, as to the *degree* of severity exercised, Mr. Hume said:—

“The outbreak was a mere mob, consisting of a small number of disaffected persons. A company of troops was despatched to quell the disturbances, and on their way they met a crowd returning home. The commanding officer thereupon seized sixty of the ringleaders, the troops fired on the mob, and, by Lord Torrington's account, nearly 200 persons were killed.” (Hansard's Debates, vol. 117, p. 90.)

In the middle of August—the rebellion having been suppressed at the end of July—the Governor issued a proclamation, in which he spoke of it as the *late* insurrection, and martial law was kept up till the middle of October, that is, for nearly *two months longer!* The Governor owned that he desired to keep up martial law

until a bill of indemnity should pass, and, as Sir F. Thesiger puts it,—

“During the whole of the time when the country was in the *peaceful state* described by the Governor and the Commander-in-chief, and other official persons, and yet the courts-martial were sitting and condemning to death or corporal punishment no less than 140 persons.” (Ibid., p. 170.)

Mr. Disraeli quoted the following, from a local journal, which was not denied. It was in the middle of September, the rebellion having been put an end to at the end of July, courts-martial and civil tribunals were then *sitting together* :—

“It is with feelings of sorrow and humiliation we hear that 17 persons now lie under sentence of death for having taken part in the late rebellion. These unfortunates have been tried by the civil tribunals, and recommended to mercy by the Chief Justice. . . . While we are writing, a court-martial holds its sittings; twenty-one persons have already been shot under its sentence.”

And Mr. Disraeli said—

“It has not been denied that, *when tranquillity was restored*, these tribunals still pursued their dreaded course; *and there were executions by the score.*” (Hansard, vol. 117, p. 246.)

This, be it observed, *was not denied*; and well might Mr. Disraeli upon that say with indignation, in words quoted by Mr. Forster, from a debate, however, in which his predecessor, Mr. Hawes, had vindicated all this :—

“It is because I do not believe that the interests of humanity were consulted, but a policy of panic—a policy under which measures have been adopted, *disproportioned to the exigency*, that I support the resolution of censure.” (Ibid.)

Here the true *ratio decidendi* was conveyed, in these words, “*disproportioned to the exigency.*” If it was so, if it was grossly and grievously so, as in that case it was said to be, no man could possibly, one would think, defend it; and yet it *was* defended by the Government of that

day, the Government of Lord Russell, although they *did not deny the facts* stated. Nevertheless the Government of Lord Russell vindicated the course which had been taken, and his Under-Secretary for the Colonies, Mr. Hawes, thus stated the case :—

“There are two questions on which the decision of the House must turn : first, *what was the state of the island* at the time of these events, and whether there was undue and unnecessary severity in carrying martial law into effect.” (Hansard's Debates, vol. 117, p. 190.)

Then the Under-Secretary cited authorities on the first point which rather went to show that there was *no* formidable rebellion. The Chief Justice had said :—

“A more *futile and contemptible* attempt at rebellion had never been made. No one who has listened to the evidence can doubt that the common people *were driven into it like a flock of sheep*; that it was hatched by priests and headmen, and that the common people *were extremely passive in it*.”

So as to the *military* authority :—

“Colonel Braybrooke admitted that the general impression was at first that the colony was *on the eve* of a rebellion. Afterwards he said that from information which he had received he was induced to think that too much had been made of it. But the Governor and Council thought otherwise. (Ibid, 190.)

It must be manifest that a *weaker* case for martial law was never known, or a stronger or more extreme case of its *exercise*. Yet it was upheld.

On that occasion, however, the law on the subject was laid down very broadly by the highest authorities, by all the law authorities of the Government, and by the greatest master of military law in the world, and by the most eminent constitutional authorities, including the then Lord Chief Justice of the Queen's Bench, and the *present Lord Chief Justice*, who became Attorney-General before the debates were over, and added his official authority to that of his predecessor. They all with one voice declared

that martial law was military authority, that it applied to all persons, and that the Governor was right in leaving the question of its continuance and its execution to the military commander. The Judge-Advocate-General, Sir David Dundas, said :—

“ Martial law is unwritten law, which arises upon a paramount necessity, to be judged of by the Executive. It applies to all persons, whether civil or military.” (Report of Committee on Ceylon, 1851.)

The Attorney-General, the *present Lord Chief Justice*, said in his official capacity in the House of Commons :—

“ That during martial law the ordinary criminal courts cease to have jurisdiction. And that, as to the amount of punishment to be inflicted by courts-martial, it was not to be looked at with reference only to the particular rebellion, but to all the circumstances of the case. *We do not punish men simply for the offences committed, but in order to deter others from following their example.*” (Hansard’s Debates, vol. 115, p. 226.)

Could Mr. Eyre have anticipated that the very same man, who thus, as Attorney-General, upon his official responsibility as the law adviser of the Crown, and as the legal adviser of the House of Commons, declared the law to be that courts-martial under martial law in time of rebellion might punish men, not merely for their offences, but in order to deter others from following their example, would, when Lord Chief Justice, denounce him, with all the weight and influence which belonged to his high office, for *having acted upon that opinion* ? Yet so it was !

But it was not left merely to law officers of the Crown. The highest legal, constitutional, and military authorities in Parliament laid down the same doctrine, that martial law was military authority, and that its *exercise, therefore, must be left to the military commander.* This was laid down by Sir James Hogg, the Chairman of the East India Company, in the House of Commons, said who :—

“ The Judge-Advocate was quite correct ; it is a suspension of all law.

It cannot be the subject of regulation ; when martial law is proclaimed, *the commanding officer must use his discretion.*" (Parl. Deb., 1851, Ceylon.)

So the Duke of Wellington said in the House of Lords :—

" Martial is neither more or less than *the will of the General who commands the army*,—in fact, martial law is no law at all.

So Earl Grey, that distinguished constitutional statesman, said :—

" I was glad to hear what the noble Duke had said with reference to what is the true nature of martial law, for it is exactly in accordance with what I myself wrote, and I am sure *I was not wrong in law, for I had the advice of Lord Cottenham, Lord Campbell, and the Attorney-General*, and explained to my noble friend, that what is called proclaiming martial law, is no law at all, but merely, for the sake of public safety, in circumstances of great emergency, setting aside all law, and *acting under the military power.*"

It is true the noble earl added that it would require an indemnity, but that is not material for the present purpose, which is not to consider whether all this would be strictly legal, but whether it would not be *proper* for a Governor to do, or whether he would not naturally enough *consider* it was proper when he recollected what all these high authorities had said in a case where martial law was kept in force for *ten weeks after actual rebellion was over*. Would he ever have expected that the very minister then in power would recall him for having acted in a similar manner ? or would he have expected that the Attorney-General who succeeded Sir J. Jervis, and adhered to and upheld the view of his predecessor, would, as Lord Chief Justice, *denounce him for having acted upon the authority of his own opinion !*

Then, as to the *continuance* of martial law, a continuance, be it observed, *for ten weeks after actual rebellion was at an end*, the Attorney-General (Sir A. Cockburn) said :—

" It is stated that the continuance of martial law was unnecessary.

No evidence had been adduced to satisfy them that martial law was unnecessary; on the contrary, there was evidence of a cogent character which led to a contrary conclusion. The Governor had conceived the notion of putting an end to martial law, and he brought the matter before the consideration of his proper advisers. *The principal military officer of the colony took exception to that course, and declared that there were reasons why martial law should be continued. The Governor upon this convoked the Council, and stated his desire to put an end to martial law. They replied, and there was not one word of objection to the continuance of martial law, and they expressed their opinion that it was to the promptitude of the Government, in the proclamation of martial law, that they were indebted for the speedy and successful termination of the rebellion. When he found the Council ascribing their security to the conduct of the Government in the matter, it did seem monstrous for any man to say that there had been no necessity for the continuance of martial law."* (Hansard's Debates, vol. 117, p. 223.)

Could it occur to Mr. Eyre as conceivable that the same man, when Lord Chief Justice, would under circumstances precisely similar in those respects, only in a case infinitely stronger, because of infinitely greater danger, not only *not* declare it monstrous to say that there was no necessity for the continuance of martial law, but himself declare it, extra-judicially, in a case not before him, but in which he endeavoured to give all the weight that belonged to his office to the opinion he expressed! The Attorney-General on that occasion was the *present Lord Chief Justice*! And he evidently considered it conclusive against any censure upon the Governor for continuing martial law—that he had continued it in accordance with the opinion of the Commander-in-chief and his council. And so Lord Russell considered, and distinctly stated on that occasion. The Attorney-General went on to say:—

"There was a large portion of testimony also bearing on the same point, contained in resolutions adopted at public meetings, addresses from members, letters from magistrates, &c., all of which concurred in the necessity *not only* for the proclamation of martial law, but for its continuance during the period in question. And what was that period? Why, just a period of ten weeks!" (Ibid., p. 224.)

Here again, as will be seen from the evidence in the

Report of Mr. Eyre's case, the circumstances were precisely similar in these respects, only there was this difference, that in the case of Jamaica the rebellion was infinitely more formidable, and the character of the danger infinitely more fearful, since it was a murderous rebellion, a rebellion for the extirpation of the whole of the white inhabitants by means of massacre ! So much for the continuance of martial law. Then as to its exercise, and the question of excessive severity : the Attorney-General admitted that 126 persons had been tried by court-martial and punished, and that eighteen had been executed in a case of a mere political rising, where *not a single life had been taken* by the insurgents, and above 200 of them had been slain in the field ! And his defence as to this was that out of the 126 as many as near 80 had been punished for ordinary offences, which had nothing to do with the rebellion, but who were brought before courts-martial because, he said,—

“ Under a system of martial law the ordinary Criminal Courts ceased to have jurisdiction.” (Ibid., p. 225.)

So that, as Mr. Disraeli observed,—

“ To prove as an excuse for the existence of these tribunals that there was rebellion and treason, the hon. and learned gentleman shows that the majority of the prisoners brought before them were not guilty of either !” (Ibid., p. 246.)

And again, as Mr. Disraeli also observed,—

“ It is not denied that when tranquillity was restored, these tribunals still continued their dreaded course, and there were executions by the score, not only of the leaders of the rebellion, but of the poor peasantry of the country.” (Ibid.)

For, although the Attorney-General only admitted eighteen to have been executed, Mr. Disraeli proved by documents he read that there were *executions by the score* ; and this in a case where the insurgents had taken not a single life, and where hundreds had already perished in the field ; and the rebellion was quite quelled in a day

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or two, and when martial law was kept in force for nearly three months afterwards ! Who would have dreamt that the Attorney-General, who, as law adviser of the Crown, defended all this, on the ground that *when martial law was in force, the ordinary criminal tribunals ceased to have jurisdiction*, would, a few years later, as Lord Chief Justice, denounce from the bench a governor who had kept martial law in force, under an Act expressly allowing him so to do, for only *three* weeks after armed resistance had ceased, in the presence of a tremendous danger, and for the punishment of not one-tenth part of those who had taken an active part in a rebellion, in which thousands were engaged, and of which the object was the extirpation, by massacre, of the whole white population ? In the Ceylon case, as Mr. Hume stated, 380 persons suffered for a mere political rebellion, in which not a life was taken by the insurgents. Although, it is true, the Attorney-General disputed this statement, he did so upon the ground that only 126 had been tried by court-martial ; but above 200 had been killed in the field—that is, had been slaughtered when met in a mob, without any real attempt at resistance on their part ; and, as Mr. Disraeli afterwards proved, after all this, there were executions by court-martial “by the score.”

The Attorney-General, however, met the question of excess as boldly and broadly as the question of continuance. He said :—

“They were told that the rigour was excessive. He admitted that it was so, if they looked at the amount of punishment only with reference to the particular rebellion. But in considering the question of punishment, it was necessary that the Governor should look at all the surrounding circumstances of the case. They did not punish men simply for the offences they committed, they punished them in order to deter others from following their example. It was all very well to talk of this comparatively bloodless rebellion, which they had suppressed without difficulty by the troops that were sent to the spot, but let them recollect the spirit of the people, their disaffection to the Government, and all the circumstances connected with the native population. He was perfectly ready to admit that the population were cowardly ; their habit was to fight in the

jungle, and to take their enemy at a disadvantage. But in the present instance they had themselves been taken at a disadvantage. They fled in all directions, and the fugitives spread terror through the surrounding districts, and so the insurrection subsided as suddenly as it arose. But all this showed the spirit of the people, and the necessity there was for vigorous measures. If those measures had not been adopted, if, instead of martial law, and prolonging it until the thing was taken, Lord Torrington had pursued a weak and vacillating policy ; if the rebellion had been allowed to spread ; if the Governor, in defiance of the opinion of the military authorities, had refused to adopt those measures to which all classes ascribed the suppression of the revolt and the safety of the colony, what would then have been said, and where would have been the limit to the language of censure and reproach cast upon the Governor?" (Hansard's Debates, vol. 117, p. 230.)

"No doubt it was of importance that our colonial policy should be based upon sound and safe principles, but it was also of importance that we should do justice to the governors of our distant colonies, and if there was a case for inquiry, deal fairly with the case, and enter upon the investigation in the spirit of fairness, impartiality and candour. It was said, and said truly that it was essential that these colonies and distant dependencies should be protected against the cruelty and caprice of a governor. But let them take care while they talked of establishing a control over their colonial policy, that they did not do it at the expense of an innocent man ; let them *take care that they did not condemn a man for having done his best under trying circumstances*. The charge affected his character in the tenderest point ; for to say of a man that he had been guilty of shedding blood unnecessarily, was a charge of a most serious and aggravated character. As involving a question not of political principles, but of public character, they were bound, as just and generous men, to lose sight of everything except truth, and that great and prominent consideration, the justice they owed to all who were accused, and upon whom they had to pass judgment."

Admirable sentiments ! would that they had been remembered.

It is to be observed that in that case, though the Governor and council concurred in the course taken, there was considerable difference of opinion, and even the Judge Advocate and Chief Justice thought martial law was carried out too severely, and remonstrated against it. Lord Russell laid it down on that occasion, that in case of a rebellion, the Governor cannot do wrong if consulting his council, especially the *military* commander, he keeps up martial law, and commits its execution to *military* authority. He

put it chiefly upon that ground that it is a matter for *military* advice and opinion, and that as the necessity for martial law was a matter of military judgment, so also its *execution* was a matter for military judgment and military authority. And so as to its *continuance*. On that ground, although there was no massacre nor murder by the rebels, and no great deficiency of military force, martial law was continued for *eleven weeks*; and even this was justified by Lord Russell on the ground of military judgment, for he said :—

“The news of the insurrection came suddenly upon the Governor. He immediately *sent for an officer in whose discretion and experience he might well trust, and he acted according to that opinion*. He immediately saw the General commanding the forces, he took means by which the rebellion might be promptly suppressed, and in order to do that more effectually with the concurrence of the General and the Attorney-General, he proclaimed martial law in the district which was disturbed.” (Lord Russell, Debate on Ceylon, House of Commons, May, 1851.)

This view was, it should be observed, laid down as well of the *continuance* as of the original declaration of martial law; and it came in a word to this, that a Governor was not even censurable, much less gravely culpable, who, upon such questions, *acted upon the best advice he could obtain*.

“The Governor in this matter acted in concert with, and with the advice of, his executive council, and, finding that there was a preponderance of opinion in the council in favour of continuing martial law, and that above all, the General commanding the district was strenuous in advising that the operations of martial law should be continued, he continued it. The Governor was *guided by opinions which he had conscientiously formed, supported as he was by those who ought to advise him in the colony*, that in proclaiming and continuing martial law, and punishing those who suffered, he was acting in the only way that could maintain the tranquillity of the country.

“I admit that it is a most serious resolution to come to—the establishment of martial law in a colony. But the Governor had to consider that if, on the one hand, martial law cannot be carried out without the risk of punishments, which may not reach the most guilty, but those who have appeared in arms and are guilty according to the law of treason and rebellion; on the other hand, the consequence of refusing to continue martial law, or put it in force, may be that rebellion may gain a head; that in-

surrection, which is at first weak, may become formidable ; that the whole order of the colony may be destroyed ; that property may, to an indefinite extent, be ruined ; but that, above all, that humanity, for the sake of which martial law was withheld, that humanity itself may be lost sight of, and many more lives may be lost in the struggle that may ensue than would have been lost if martial law had for a few weeks been continued."

"The Government believe that in proclaiming martial law, and in punishing those who suffered, the Governor was acting, as he believed, in the only way that could maintain the tranquillity of the country, and provide for the welfare of her Majesty's subjects. It was their belief that when you send a Governor to a distant part of the globe, when you find that he is zealously performing his duty, and endeavouring by all the means in his power to preserve the colony in allegiance to her Majesty, confidence ought to be placed in him, and we ought not to throw any censure upon him on questions, upon which he was *more likely to judge rightly from the circumstances before him, with the assistance of his advisers.*" (Lord Russell, Debate on Ceylon in the House of Commons, May 29, 1851.)

The resolution which was moved in that case, and which the House of Commons, by a majority of eighty, *refused to affirm*, was—

"That the House is of opinion that the execution of eighteen persons and the imprisonment, transportation, and corporeal punishment of 140 other persons on this occasion, is at variance with the merciful administration of the British penal laws, and is not calculated to secure the future affections and fidelity of her Majesty's colonial subjects, and that these severities were the more to be deprecated, as they were exercised after the suppression of the disturbances, during which none of her Majesty's troops or public servants were killed. And that this House is of opinion that the conduct of the Governor, in keeping martial law in force for *two months* after his chief legal adviser had recommended its discontinuance, and *during which period the civil courts were sitting without danger or intermission*, was, in the highest degree, arbitrary and oppressive."

This resolution the House of Commons *refused to affirm*, and amongst those who voted *against* it, were Mr. Cardwell, who recalled Mr. Eyre for keeping martial law in force for three weeks after armed resistance had ceased, not *against* but in accordance with the advice of his whole council ; and Sir A. Cockburn, who denounced him as from the bench for so doing ; and Sir George Grey, a member of the Government which removed him ; and Lord

Russell, who was at the head of that Government; and *Mr. Samuel Morton Peto*, who was among the most prominent of those who pressed for it. Would it ever have occurred to Mr. Eyre that the very men who thus refused to condemn the continuance of martial law for more than ten weeks after armed resistance had ceased, would condemn him for maintaining it only *three* weeks? But so it was. Would it ever have occurred to him that the men who refused to censure a Governor for allowing hundreds to be sacrificed for a mere political rising, and where not a single life was taken, would condemn him for allowing one-tenth of those to be executed who had taken part in a bloody and ruthless rebellion, commencing with a cruel and atrocious massacre, and having for its object the extirpation of the whole white population? Yet so it was.

In the Jamaica case, all the elements of a terrible and formidable danger, which were wanting in the Ceylon case, were present, and these were enhanced by peculiar circumstances to a degree which rendered the peril one absolutely without possible parallel upon earth—a *negro insurrection* with the object of *exterminating* the whites, in a colony where the disproportion between the races is far greater than in any other country; “the singular rapidity with which it spread over an extensive tract of country, and the state of excitement prevailing in other parts of the island.”

“The suddenness of the insurrection, the uncertainty of its possible extent; its avowed character as a contest of colour; the atrocities committed at its first outbreak; the great disparity in numbers between the white and the black populations; the real dangers and the vague alarms by which he was on every side surrounded; the inadequacy of the force at his command to secure superiority in every district; the exaggerated statements which reached him continually from distant parts of the Island; the vicinity of Hayti, and the fact that a civil war was at the time going on in that country.”

These were the circumstances, as explained by the

Secretary of State, who removed the Governor; such was the danger which had to be encountered, and for his measures in meeting which he was recalled. It was a murderous insurrection, a dangerous insurrection, an insurrection of a race for the purpose of extermination. What were the excesses for which the Governor was censured and recalled in that case? The outrages having extended over several days, and armed resistance continuing for ten days, he kept up martial law for *three weeks* longer—that is, until reinforcements had been distributed. Thousands having taken an active part in the rebellion, less than one-tenth of them were put to death, and among them the *author* of the rebellion—the man who, it was admitted, had *caused* it, the man who it was proved by strict legal evidence had incited the negroes to rise and massacre the whites. Such were the measures the Governor sanctioned in the first hot rage of pursuit. Among some eighty of the negroes who were put to death, there were some rash and hasty military executions, and, in several instances, acts of atrocious excess by private soldiers in the absence of their officers. After this, capital punishments were only inflicted by court-martial, and in the great majority of cases, the Commissioners said “The evidence was *quite sufficient to justify the findings.*” They could only mention three or four cases in which the evidence was insufficient, and half a dozen more in which the sentence was disproportionate to the offence. These were the only cases out of 354 which were dealt with by court-martial after the first rage of pursuit. The total number of deaths being 439, out of whom, therefore, so far as could be made out by the statements of the commission, about 400 were justly executed, leaving an excess of about 40 cases, almost entirely occurring in the first few days—in the first hot rage of pursuit; and cases moreover, for the most part, of atrocities committed by private soldiers in the absence of their officers, and not in accordance with, or even contrary to, orders. Such were the

excesses for which the Governor was censured and recalled, in a case of unparalleled danger, by the Ministers who, in the Ceylon case, refused to censure a governor for keeping up martial law ten weeks, and putting to death some 250, in a case in which there was *never* any great danger, and, after the first day or two, no danger at all.

It will not do to say that in the Ceylon case *most* of the natives slain were slain by the military in the field; nor will it do to gloss such slaughter over by the name of "battle." It is a gross perversion of the term to apply it to a case where hundreds of unarmed, unresisting men—a mere mob—are slaughtered by regular troops; that is *wholesale military execution*, and execution, be it observed, *without trial*. Such were mostly the executions in Ceylon; that is, military executions in a mass, indiscriminating, without inquiry: a mere mob of men unarmed, or only half armed; making no real resistance, being mowed down merely because met in a body, in a mere political rising, without any notion of massacre or murderous rebellion. Such were the *bulk* of the executions in Ceylon; not the *less* executions because in a mass, and without trial. In the Ceylon case 200 were thus slaughtered. In the Jamaica case there were not above eighty thus dealt with, and those in the first few days, in the first hot rage of pursuit, and for the most part by soldiers without orders, and in the absence of their officers. After that, there were no executions *without trial*; and as the Commissioners reported that in almost all the cases, with scarcely any exceptions, the findings and sentences were justified by the evidence, it must be taken that the men were guilty of taking part in a murderous rebellion; and if the number of those thus executed *with trial* was far greater than the number so executed in Ceylon, it was only because there were so many thousands in the Jamaica case who had thus taken part in a murderous rebellion; whereas, in the Ceylon case, *there were none*; and it was *not* a murderous rebellion at all. Such was the contrast between

the two cases: the case of Ceylon one of *no* danger, and *not* a case of murderous rebellion, and hundreds of deaths were inflicted, in the mass, without trial; in the Jamaica case—a murderous and dangerous rebellion, in which thousands had taken part, which a small number were slain, in the first hot rage of pursuit *without* trial, but afterwards none without trial, and hardly any without sufficient proof of complicity in that murderous rebellion.

In the former case, the Governor was neither censured nor recalled, but entirely vindicated and upheld by the Government. In the other case, the very same Minister censured and recalled the Governor on account of severities which, in proportion to the danger, were infinitely less.

The contrast is certainly most striking between the course taken on that occasion as regarded the Governor, and the course taken on the present. *There* the Governor had continued martial law for ten weeks where there was no rebellion, and there had only been a political rising, without any real danger. *Here* he continued martial law only for three weeks after armed resistance in the field, and until reinforcements had been distributed. *There* not a single person was implicated even in an *attempt* at murder, and 250 lives were taken, most of them without any proof of guilt. *Here* thousands were implicated in a bloody and murderous rebellion, and 440 were put to death, the far greater portion for proved participation in the rebellion. The present case was admitted by the Government to have been one of the most terrible and formidable danger. It was a rebellion which commenced with a cruel massacre, in the course of which, as the Commissioners reported, thousands had actually taken part in murderous outrage. And the Governor had kept up martial law for three weeks after armed resistance ceased, and for not a day longer than the danger had lasted; and he had terminated it the moment reinforcements had arrived and been distributed. Finally, the execu-

tions by court-martial, for which alone it was admitted he was in any sense responsible, were, as regards the great majority of the cases, executions in cases of proved guilt, and did not amount to one-tenth part of those actually engaged in a murderous rebellion. Yet in the former case the Governor was *not* recalled for his conduct in keeping up martial law, while in the *present* case he was. And this was the more remarkable still when it was recollected that on the former occasion Lord Russell laid it down that the Governor was not to be censured, because he had acted in accordance with the advice of his Council, and especially of his Commander-in-chief, and in the present case the Governor *had* so acted in every one of the matters for which he was concerned and recalled—the continuance of martial law, the control of it, and the execution of Gordon. For the Commander-in-chief and the Council urged the continuance of martial law in operation. The Commander-in-chief always asserted that it was a matter for military control, and declined to observe the Governor's wishes when they differed from his own opinion, and he at the outset urged Gordon's trial upon the Governor, and, with the concurrence of those of the council who saw the proceedings, urged the execution, believing, as he said, that *prompt and decisive action was necessary*. (Minutes of Evidence, evidence of General O'Connor.) Thus, then, the Governor was recalled and censured in the present instance, although he had taken the very course which the Minister at the head of the Government had laid down in the former case as the right and proper course to be pursued.

And on the former occasion, the Minister at the head of affairs, and the Secretary of State, who now censured and recalled the Governor, had declined to concur in a resolution of censure upon the conduct of a Governor who had, in a case of *infinitely* less danger, and, indeed, after the first day or two, of no danger at all, taken a course

which, comparatively, was one of infinitely greater severity. For a sacrifice of 250 lives, or even 230, in a mere political rising, *on which not a single life was taken, or even attempted*, was surely an infinitely greater degree of severity than the sacrifice of 439 lives, or rather of 359, (for that was the number for which the *authorities* appeared to have been responsible), in a rebellion, the object of which was the extermination of our English fellow-countrymen, and which was commenced and carried on by means of massacre, and in which thousands had taken part in murderous outrages. The fact, therefore, that the very ministers who on a former occasion refused to recall or censure the Governor, censured and recalled the Governor in the present case, would of itself indicate the presence of some peculiar and exceptional causes. And these causes are to be found in the existence of a partisan agitation in this country, closely connected with the rebellion itself, and got up by the associates of its author.

The abolitionist party and the religious bodies in this country are chiefly represented in the West Indies by the Baptists, and the English ministers or missionaries of that body: a respectable and well-meaning body of men, but deeply infected with the bitter spirit and narrow-minded prejudices of their party. They had for some time been sensible of the deteriorated condition of the negro, consequent upon the fatal mistakes made by their party in the rash, precipitate, and unguarded way by which they had carried out emancipation; and they had been extremely anxious to throw the blame, if they could, upon some other causes—unjust legislation, excessive taxation, misgovernment, anything but what it was in the opinion of our ablest statesmen, viz., the deterioration of the negroes, consequent upon the fatal blunders of the emancipation measure. They had of late been instilling into the mind of the negroes the mischievous notion that they

were suffering from injustice, instead of from idleness. A certain Dr. Underhill, no doubt an excellent and well-meaning man, a leading man among the Baptists, had acted in this country in furtherance of the views of their body in Jamaica, and with that object had written to the Secretary of State a letter filled with the most inflammatory statements, the object of which was to represent the negro as ill treated. Mr. Secretary Cardwell had sent this to the Governor for an answer, and he had sent it to the magistrates for the like purpose. Somehow or other it got published, and had occasioned great excitement, especially as for some time past one Gordon, a coloured man of great influence among the negroes, had been engaged in a most mischievous and exciting agitation among them directed to the same object, viz., to lead them to imagine that they were ill-treated and injured, and above all, *that they were entitled to the back lands* of the colony. The case of Dr. Underhill, as representing the patrons of the negroes, was that they were oppressed by the planters. The case of the planters, represented through the Governor, Mr. Eyre, was, that the fault was in the negroes, who would not work with any regularity, and were addicted to idleness and to squatting on land. Everyone who knows anything about the negro colonies knows that this is so. Every Secretary of State, from Lord Grey to Mr. Cardwell, had declared it; and Lord Carnarvon's interesting and able despatch, given in another portion of this work, confirms it. The letter being sent by the Secretary of State to the Governor for the purpose of an answer, he necessarily sent copies to the magistrates and local authorities in order to *obtain* an answer.* And he sent home to the Secretary of State an immense body of evidence refuting its statements, and showing that the peasantry were not

* Mr. Eyre stated that it was published by the Baptist ministers.

ordinarily in a state of distress, but quite the contrary, and that the real source of the evil was their idleness, and indisposition to work, a view quite in accordance with the opinions of all our statesmen. And the Secretary of State sent an able and excellent despatch in answer, taking the same view, and enforcing upon the black people the necessity for energy and industry. Mr. Cardwell therein declared it as his deliberate judgment :—

“The prosperity of the labouring classes, as well as of all other classes, depends in Jamaica, as in other countries, upon their working for wages, not uncertainly or capriciously, but steadily and continuously at the times when their labour is wanted and for so long as it is wanted ; and if they would use their industry and thereby render the plantations productive, they would enable the planters to pay them higher wages for the same hours of work than are received by the paid labourers in this country ; and they may be-assured that it is from their own industry and prudence, as availing themselves of the means of prospering that are before them, and not from such schemes as have been suggested, that they must look for an improvement in their position.” (Despatch of Mr. Cardwell, 14th June, 1865.)

Nothing could be more sensible, more just, more reasonable, or more calculated to have a salutary influence in Jamaica. Yet it was this which Gordon, the alleged author of the rebellion, had used as a means of arousing ill-feeling among the negroes. And what did the Jamaica Committee, among whom was Dr. Underhill—what did *they* say about it ? That it was insulting to the negroes ! It seems strange, no doubt, but here it is, in one of their own publications—

“Mr. Cardwell’s letter, issued under such circumstances, *must have looked like insult*. An exhortation to earn bread by working at a time when a great portion of the population had no work to do, was far more likely to produce bitterness than Dr. Underhill’s letter.” (Papers of the Jamaica Committee No. 1.)

The letter of Mr. Cardwell, however, was published by the Governor, and the publication being a public refutation

of the misrepresentations which had been circulated amongst the blacks by certain Baptist ministers, extremely annoyed them, and they actually complained of it. The course taken by the Governor, however, was quite approved of by the Secretary of State. The Governor wrote thus to him about it:—

“I have the honour to acknowledge the receipt of your despatch No. 222 of 14th June, conveying the reply of her Majesty to the petition of certain poor people of St. Ann’s.

“This reply has been duly communicated to the petitioners.

“Considering the agitation which has recently been got up in reference to the alleged starving state of the people of this colony, and in view of the very injurious impressions as to the amount of aid and assistance to be offered them from home which have been instilled into their minds by designing persons, I have thought it would be a great public advantage to make generally known the very just sentiments expressed, and the excellent advice given in the reply referred to.

“I have therefore directed the Queen’s reply to be published in the *Government Gazette* and in the local newspapers, and I do not doubt but that it will have a very beneficial effect in allaying the irritation and correcting the misrepresentations which have originated from Dr. Underhill’s letter.”

To whom the Secretary of State replied in August:—

“I have to acknowledge the receipt of your despatch of 6th July, stating that you had published in the *Government Gazette* and in the local newspapers the reply which I was commanded by her Majesty to make to the petition of certain poor people of St. Ann’s, which was forwarded in your despatch of 25th April.

“*I approve of the publication of the reply.*” (Despatch of Mr. Cardwell, August, 1865.)

But, although Mr. Cardwell approved of the publication of his reply, Gordon, and Dr. Underhill, and the Baptist missionaries did not, as it exposed the character of their agitation. Gordon was enraged at it: he had already published an exciting and insolent address to the negroes, provoking them to rebellion. This inflammatory address had been issued and circulated by this person for a public meeting at Morant Bay on the 29th July, headed

"State of the Island," and was couched in these violent and exciting terms:—

"Poor people of St. Ann's! Starving people of St. Ann's! Naked people, &c. You who have no sugar estates to work on, nor can find other employment, we call on you to come forth. Even if you be naked, come forth and protest against the unjust representations made against you by Mr. Governor Eyre and his band of custodes. You don't require custodes to tell your woes; but you want men free of Government influence—you want honest men.

"People of St. Thos. ye East, you have been ground down too long already; shake off your sloth. Prepare for your meeting. Remember the destitution amidst your families and your forlorn condition; the Government have taxed you to defend your own rights against the enormities of an unscrupulous and oppressive foreigner, Mr. Custos Ketelholdt. You feel this, and no wonder you do; you have been dared in the provoking act, and it is sufficient to extinguish your long patience. This is not the time when such deeds should be perpetrated; but as they have been it is your duty to speak out, and to act, too! *We advise you to be up and doing on the 29th, and maintain your cause, and be united in your efforts*; the causes of your distress are many, and now is your time to review them. Remember that he only is free whom the truth makes free—you are no longer slaves, but free men; then, as free men, *act your part on the 29th*. If the conduct of the Custos in writing the despatch to silence you be not an act of imprudence, it certainly is an attempt to stifle your free expression of your opinions. Will you suffer this? Are you so short-sighted that you cannot discern the occult designs of Mr. Custos Ketelholdt? How that he gave the money to his own friends and kept it himself instead of distributing it to the doctors and ministers of religion for the poor? Do you perceive how he shields Messrs. Herschell and Cooke in all their improper acts? Do you know how deaf he is on some occasions, and how quick of hearing in others? Do you remember his attempt at tyrannical proceedings at the elections last year and this? Inhabitants of St. Thomas-in-the-East, you have been afflicted by an enemy of your peace—a Custos whose views are foreign to yours. Do your duty on the 29th day of July, 1865; try to help yourselves, and Heaven will help you."

This, it will be observed, was originally issued for a meeting at the end of July, and apprehensions had been excited of a rebellion to break out on the 1st August, but the precautions then taken had prevented the insurrection which had been then apprehended. The address, however, was kept in circulation by its author; and it will be observed that it held up to execration the very persons

who were afterwards massacred, on the occasion of the outbreak, by persons in close connection with its author. It should be mentioned here that a subsequent despatch disclosed that there had been a system of agitation thus described in a letter from one of Gordon's associates to another, the writer being editor of a paper:—

“I could scarce command vital thought enough yesterday to do justice to your meeting, and against the wish of Wn. I wrote the feeble editorial that appears to second the noble exertions of the Vere people. *What I desire is to shield you and them from the charge of anarchy and tumult that in a short time must follow these powerful demonstrations.* How I succeeded you must judge yourself.” (September 11, 1865.)

In such a state was the colony that it was with great difficulty rebellion was prevented from breaking out. The Custos of St. Elizabeth, however, on the 28th of July, wrote to the Governor in these terms:—

“From all I can gather there is no doubt that an insurrection to rob and burn was decided on, and that strong and severe measures will be necessary. The general opinion among proprietors—white, coloured, and black—is that all the disturbance and ill-feeling is to be attributed to the late assertions that the negroes are cheated and ill-treated, and that if permitted to be reiterated there will be no security for life or property.”

Measures were accordingly taken, a ship-of-war was sent round; the 1st of August passed over without a rising. On that day the Custos of St. Elizabeth wrote to the Governor thanking him for the measures adopted for putting down the evil feeling which he firmly believed prevailed throughout the country. Mr. Eyre, however, when the first apprehension was brought under his notice of disturbances likely to occur prior to August, 1865, took immediate measures by sending a man-of-war round, and directing the local authorities to take such other steps as they could on the spot; and the taking of these measures prevented the disturbances at that time. No disturbances broke out, at all events, until the outbreak of October, 1865.

In the meantime, the Governor, in order to counteract this mischievous agitation, which had only been prevented from breaking out into a rebellion in August, by the presence of men of war, wrote to some of the leading Baptist missionaries, begging them to circulate Mr. Cardwell's excellent answer, which they declined to do. Thereupon the Governor's Secretary wrote to them in terms of reproof and remonstrance, and making this striking remark—

"I am to state that if such advice had been more frequently given by those who undertake to guide and teach the people, their condition at the present moment would probably have been much better than it is, and the advice be less needed now."

This irritated the Baptist Missionaries and Ministers, and the Governor, in sending home an account of the matter, referred to the bad opinion entertained of the body by Sir Charles Metcalfe—quoting the passage already cited, which, of course, when it was known, greatly increased their irritation.

On the 22nd August, 1865, Mr. Eyre wrote a despatch to Mr. Cardwell, in which he gave an account of all this. It was received in the middle of September.

"In my Despatch No. 169, of the 6th ultimo, I informed you that the local Government attached so much value and importance to the admirable reply of her Majesty to certain poor people of St. Ann's, and considered the very judicious advice therein given as so well suited to the entire community, that it was thought right to make the reply publicly known through the medium of the newspapers and the *Gazette*.

"2. It was subsequently considered, both by myself and the Executive Committee, that as there are so many districts in which the newspapers are not seen, it would be better to print the reply in the form of hand-bills, and have it distributed and posted in all parts of the colony.

"3. This was accordingly done, and 50,000 copies were thus circulated by means of the custodes, the justices, the ministers of religion of all denominations, the inspectors of police, and other persons.

"4. I am happy to say that with very few exceptions all the parties invited to do so have, I believe, cordially co-operated with the Government in making the Queen's advice as widely known as possible ; and I do not doubt but that it will have a good effect in removing from the minds

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of the peasantry much misapprehension which they have either been led to entertain from ignorance, or which has been instilled into their minds by mischievous persons.

"5. Copies of the only refusals to circulate the reply which have yet reached me are herewith attached.

"I regret to say they all emanate from ministers of the Baptist denomination residing in the parish of St. James's, one of the three districts where disaffection has recently been reported to exist, and in which it was thought prudent to take precautionary measures to guard against any possible aggressions, as reported in other despatches.

"I append a copy of my reply to the letters of Messieurs Henderson, Dendy, Reid, Hewitt and Maxwell.

"6. I need only remark, further, that some of the gentlemen who now decline to circulate the Queen's advice took a prominent part in the meeting held at Montego Bay on the subject of Dr. Underhill's letter, and the resolutions of which meeting were transmitted in my despatch No. 137 of 6th June last.

"7. It is quite clear that if the ministers of religion residing amongst an ignorant, debased, and excitable coloured population take upon themselves to endorse and reiterate assertions such as those in Dr. Underhill's letter, to the effect that the people are starving, ragged, or naked; that their addiction to thieving is the result of extreme poverty; that all this arises from the taxation being too heavy; that such taxation is unjust upon the coloured population; that they are refused just tribunals and denied political rights; then such ministers do their best not only to make the labourer discontented, but to stimulate sedition and resistance to the laws and constituted authorities. Nor should I be surprised if in the districts where such a course is taken a refusal to pay the taxes, and consequent disturbances in enforcing them, should be the result.

"8. In pleasing contrast to the communications from Messieurs Henderson, Dendy, Hewitt, Reid, and Maxwell, I append a copy of a letter from the Reverend Samuel Jones in the parish of Metcalfe.

"P.S.—I have just had put into my hands by the Baron Von Ketelholdt an inflammatory address (of which I enclose a copy), which has been printed and circulated amongst the people of St. Thomas-in-the-East (of which district the Baron is custos), prior to a meeting which has lately taken place there.

"This document shows the manner in which a few evil-disposed agitators get up public meetings in support of Dr. Underhill, and the spirit in which the promoters prepare the populace beforehand.

"The Baron informs me that he has good reason to believe that George Wm. Gordon, one of the members of the House of Assembly, either wrote or was concerned in getting up the printed address now forwarded."

There can be no doubt that this was seen by Dr.

Underhill, and the leading men of the Baptist body, and the abolitionist party in this country, and undoubtedly it influenced their minds very much against Mr. Eyre to find all their course thus described as mischievous.

During this period, while on the one hand Dr. Underhill, the Secretary of the Baptist Association, was, with the aid of Sir Samuel Morton Peto, then in Parliament, and the leading representative of the Baptist body, using their influence at the Colonial Office in favour of the course taken by the ministers and missionaries of that body in Jamaica, in exciting the negroes to discontent by representing their condition as the results of misgovernment and oppression, their leading associate in the colony—Gordon—was, through the medium of the Anti-Slavery Society in London, representing the abolitionist party, headed by Mr. Buxton, exercising a similar influence at the Colonial Office in favour of the same course of agitation in which he was then engaged.

Thus at one of the meetings afterwards held against Mr. Eyre by the Anti-Slavery Society the secretary, Mr. Chamerovzow read a letter which he had received from Gordon, written in the same spirit as his inflammatory addresses to the negroes, representing all the evils of their condition as arising entirely from oppression and misgovernment. The letter ends thus :—

“It would be well if some benevolent-hearted friend would yet persevere in the good work of faith, and call at the Colonial Office for information on these points.”

There can be no doubt that some friend *did* call at the Colonial Office, and make representations in accordance with the wish of the writer, for Dr. Underhill was constantly there at that time. Here then we see the intimate association between Gordon, who was inflaming the negroes into rebellion, and the abolitionist party at home, who were encouraging him to the utmost in that dangerous system of agitation.

The agent at home, Dr. Underhill, the Secretary of the Baptist body, who, by means of Sir Samuel Morton Peto and Mr. Buxton, had immense influence at the Colonial Office, exerted himself to the utmost there to oppose the government of Mr. Eyre; and the following correspondence had taken place just before the rebellion. He writes to Mr. Cardwell thus :—

“You are doubtless aware that the publication in Jamaica of your despatch to his Excellency the Governor, containing a copy of my letter, has created intense excitement throughout the island. I am given to understand that the facts on which I ventured to address you are unquestioned, although opinions vary as to the causes of the distress under which Jamaica is suffering, or the intensity of their operation. Should her Majesty’s Government, under the circumstances, decline to take some decisive action, *great disappointment will result*, and I fear the existing despondency of all classes will be aggravated by the expectations the inquiries of the Governor have awakened.

“Many additional facts and important documents have been communicated to me, on which I shall venture, when I return to town, to address you. Meanwhile, if it be consistent with the practice of the Colonial Office, I would earnestly request the privilege of your permission to peruse the reply of his Excellency the Governor of Jamaica to the statements of my letter. I should then be able more usefully to lay the whole case before you for your final consideration.”

This letter indirectly reveals the *influence* of this party at the Colonial Office; the writer requesting and receiving permission to peruse and reply to the despatch of a Colonial Governor to the Secretary of State. The letter and the reply alike disclosed a state of disaffection produced by representations to the peasantry, the reverse of those which had been made in the salutary despatch of the Secretary of State. The reply was dated the end of September, 1865 :—

“In answer to your letter of the 17th of August, I am directed by Mr. Secretary Cardwell to state that he has no objection to your seeing the despatches which have been received from the Governor of Jamaica on the subject of your letter, but that they cannot be duly appreciated without a careful examination of *the reports and statements collected from the custodes of parishes, magistrates, clergymen of the Church of England and other*

ministers of the Gospel, judges and others, on which the Governor's views are founded and maintained. These reports and statements are extremely voluminous, and much time and labour would be required to make copies of them, but they will be open to your perusal at any time at which it may suit your convenience to attend at this office for the purpose of reading them. And when you shall have read them, Mr. Cardwell will be glad to learn what specific action of the Government they appear to you to suggest, always bearing in mind that legislative action requires the concurrence and co-operation of the Legislative Council and Assembly of Jamaica.

"With reference to the apprehension you express that the excitement occasioned by the inquiries to which your former letter led, will result in great disappointment if some decisive action be not taken, I am desirous to acquaint you that the Governor has reported, though without attaching much credit to it, *a rumour of riots and insurrection to break out in consequence of delusions created in the minds of the peasantry by designing persons taking advantage of the representations made of the hardships to which they are subjected!* and therefore if you shall have any measures to suggest for the benefit of the peasantry, which it is within the competency of her Majesty's Government to adopt, it will be desirable that your suggestions should be made with as little delay as possible." (Parliamentary Papers on Affairs of Jamaica.)

The answer of Dr. Underhill on the part of the Baptists, was a demand for a Commission of Inquiry. This was at the commencement of October, 1865, and in a few days afterwards the insurrection broke out.

The actual leader in the insurrection was the man Bogle, who had been so long an intimate associate with Gordon,* and the principal actors in it were members of

* The Commissioners in their report point out that Gordon and Bogle were members of the body called Native Baptists, the class of whom Mr. J. Gurney, in "Six Months in the West Indies," had spoken so strongly. It was probably of this class Gordon himself spoke when he said, speaking in his place in the House of Assembly on the 28th April, 1863, "I know that the Baptist congregation is the most numerous in the island, and, if you suffer them to come here for aid to repair their chapels, they will come for the means of supporting their ministers, *many of whom are men who pretend, but do not follow, the precepts of Christ—men who have failed to command respect from their riotous conduct.*" Nevertheless, notwithstanding this opinion of them, he afterwards, when he embarked in his fatal career of sedition, joined them; and the Commissioners stated:—"A chapel belonging to him, of small dimensions, stood on his land, and was opened about Christmas, 1864. He was a member of the 'Native Baptists,' *a sect so called as being independent of and distinguished from the London Baptist Mission.* Mr. Gordon was an intimate friend and correspondent of Bogle. Mr. Gordon had himself become a Baptist, and had a tabernacle of his own on the Parade at Kingston."

the religious body to which they belonged—the Native Baptists.

Thus it was clear that the Baptist body under Dr. Underhill and Sir Samuel Peto, and the abolitionists, represented by Mr. Buxton, were encouraging Gordon and the native Baptists in a course of agitation likely to lead to rebellion amongst the negroes, and which *it afterwards appeared* he intended, though they did not.

It afterwards appeared that at this time Gordon was going about with certain blacks—members of the native Baptist body—agitating the negroes, and inflaming them to the utmost, by incitements not only as to general oppression, but also specifically as to the right to the “back lands.” It was proved that a book was being circulated in some of the Baptist chapels and schools holding up to admiration as martyrs those who had been executed in the rebellion of 1831. (Minutes of Evidence, p. 712.) It was proved that Gordon on one occasion told an assembly of negroes that they must do as the blacks had done in Hayti (Ibid. 444); and that on another occasion he said to the blacks who were the actual leaders in the rebellion, that if the whites did not give up the back lands, they must all die. (Minutes of Evidence on Gordon’s trial. Report of Commissioners.)

It was further proved that he had often, some months before the outbreak, spoken of rebellion to intimate friends, and had said that there would be a rebellion in six months, if the people had not redress. (Minutes of Evidence, p. 122.) And that when a friend remonstrated with him, and said it would be hopeless to dream of success, he replied:—

“Ah, you are quite mistaken there! All the power of the great Napoleon could not put down the rising in Hayti, and it was successful, for the troops died of disease before they could meet the people in the mountains.” (Ibid.)

All this and much more was afterwards proved to have

been going on at this time, and Mr. Eyre was aware that Gordon was engaged in this course of agitation.

For some years Gordon had become intimately associated with certain of the blacks who were afterwards the ring-leaders in the rebellion, and he was looked up to as their political leader, and was their constant associate in a career of agitation. Among these was Paul Bogle, who cultivated a few acres of land at Stoney Gut, a village in the hills about six miles inland from Morant Bay.

A chapel belonging to him of small dimensions stood on his land, and was opened about Christmas, 1864. He was a member of the "Native Baptists," a sect so called as being independent of and distinguished from the London Baptist Mission. Mr. Gordon was *an intimate friend and correspondent* of Bogle, and had himself become a Baptist, and had a Tabernacle of his own on the parade at Kingston.

On the 26th February, 1864, Mr. Gordon wrote from Kingston to Paul Bogle at Stoney Gut, as follows (*inter alia*):—

"Dear Bogle,—Things are bad in Jamaica, and will require a great deal of purging."

When Paul Bogle's house was searched in October, a list of ten names was found there in the handwriting of Mr. Gordon. Mr. Gordon's own name was at the head of this list, and the nine other names were those of persons connected with Bogle's party. *A much larger list of names*, most of which were original signatures or marks, was afterwards taken from the *private writing table of Mr. Gordon* at Cherry Garden. This last list was headed by the name of Paul Bogle, and contained 148 other names, many of which belonged to persons *who were implicated in the outbreak at Morant Bay*.

One Lawrence was Mr. Gordon's manager, and resident on his estate called "Rhine," near Bath, in St. Thomas-in-the-East, and he thus wrote to Lawrence:—

"They (Ketelholdt and Herschel) are a very wicked *band*, and the

Lord will yet reward *them all*. . . . I note what you say of . . . He is a sort of fiend who, altho' chastised, has remained hardened. We can afford to spare him, and perhaps England will better agree with him. *Mark, the reign of others will also soon be cut short.*"

Again, on the 6th of March, 1865, he writes to Mr. Lawrence :—

"We must wait and see what the end will be of all these evil doers!"

Again, he writes to his manager, 27th April, 1865 :—

"The case of Gordon v. Ketelholdt was a great triumph to Baron and all the Cookes, for in spite of everything which was clearly in my favour they got a jury of five to give a verdict for defendant. What a fresh victory is this for them all! How well it looks, and how diminished is my head! *But wait, it is not yet all over!*"

And again on the 29th of April, 1865 :—

"I have no doubt there are dual actions and strong undercurrents against me, but wait and see the end of it, *be not cast down*, the Lord is at hand. *Keep you quiet, and see the end of it all.*"

On the 4th of May he wrote :—

"I know the inveterate dislike of Herschel and all his *confreres*. *They will soon all find their level, and go like chaff against the wind.*"

Mr. Gordon was staying at Hordley in the Plain-tain Garden district of the parish in June, 1865, and in conversation there with Mr. Harrison, he was spoken to about the state of the feeling among the people, and told that he could not control it. In reply "Oh!" said Mr. Gordon, "if I wanted a rebellion I could have had one long ago. I have been asked several times to head a rebellion, but there is no fear of that. *I will try first a demonstration of it*, but I must upset that fellow Herschel, and kick him out of the vestry, and the Baron also, or bad will come of it."

On the 13th of July he wrote to Lawrence at the Rhine "What will these (?) men, surely some calamity *will come* on them."

About the same time, conversing with a Mr. Beckwith

at Kingston, about a meeting held on the subject of labourers and wages, Mr. Gordon was told it was calculated to excite a spirit of disaffection amongst the people; to which Mr. Gordon answered, "Ah! well, we must have it some way or the other; this is the great movement; and if we do not secure it in this way, *in six months there will be a revolution in the country, and as I have always stood by the people I will stand by them then.*"

On the 11th August the printed address to the people of St. Thomas-in-the-East, headed "State of the Island," was posted up on a cotton tree in the main road, opposite to the house of one of the negroes with whom Gordon was associated, and up to the time of the rebellion it was kept in circulation and copies were found to have been sent by Gordon to Bogle and the other leaders not long before the outbreak.

Such were the antecedents of the rebellion. But it is necessary to consider the state of the colony at the time the rebellion broke out, with reference especially to the means for the repression of a rebellion.

When the rebellion broke out, the measures necessary for its suppression would of course depend upon the degree of the *danger*, which would depend upon two things, the character of the rebellion, and the amount of military force at the disposal of the Governor. Now, as to the first, there can be no doubt that it would be most formidable. The negro population were thus described by the Governor in one of his despatches, entirely in accordance with the testimony of history:—

"It is scarcely necessary to point out that the negro is a creature of impulse and very easily misled, very excitable, and a perfect fiend when under the influence of excitement which stirs up all the evil passions of a race little removed in many respects from absolute savages. Under these conditions, and knowing the insecure and unprotected state of the entire colony, and the small force available for our defence in the event of any general rising taking place simultaneously, it became a matter of absolute necessity and self-defence, *not only promptly to put down the out-*

break, but by proclaiming martial law in the districts where it existed and contiguous thereto, to ensure that the punishment inflicted should be summary and severe. It was necessary to make an example which, by striking terror, might deter other districts from following the horrible example of St. Thomas-in-the-East."

This was entirely in accordance with the view taken by Earl Russell and Sir A. Cockburn in the Ceylon case. Sir A. Cockburn said that it was necessary to execute men who had taken part in the rebellion in order to deter others,* and Lord Russell upheld all that had been done on that principle. The rebellion in Jamaica was infinitely more formidable than in Ceylon.

The Commissioners, in their report, amply attested this description of the rebellion, stating *that it spread with singular rapidity over a large tract of country*, a country described by the Governor as containing 500 square miles, and 40,000 blacks. The Secretary of State also said that "*for several days the insurgents had forty miles of country in their possession.*" (Hansard's Debates for 1860, vol. 184, pp. 1819—1820.) So as to the formidable character of the rebellion there could be no doubt, though men in high position were not ashamed to say it was a mere riot, and "over in a day." And it was given in evidence that the black population of the island was above 400,000, and the whites about 13,000, while the total number of troops was only 1,000.

Then as to the second part of the subject, the force available, at the time of the outbreak of the rebellion, for its suppression, the facts were clear and beyond a doubt. The Admiral—the island appearing tranquil—had left the station with nearly the whole of the naval force usually stationed there, and there was only one vessel left and three "tenders." The very first despatch of the Governor, with its enclosures, disclosed this, mentioning those vessels as the *only* ones upon the station. And as to the military force, there were only three battalions,

* *Vide ante*, p. 1—10.

one white and two black, in all about 1,000 men. Another ship by accident came in, and reinforcements were at once sent for from Barbadoes and Nassau, but they *did not come until the end of the month*, so that this terrible and formidable rebellion had to be encountered with about 1,000 men, and the crews of one vessel and three tenders.

This was afterwards placed beyond a doubt by official or authentic documents. It afterwards appeared from the disposition-sheet of the Jamaica Squadron, under the command of Vice-Admiral Hope, dated the 9th October, 1865, a few days before the rebellion broke out, that out of the thirteen vessels belonging to the Squadron, only one small frigate and three tenders were on the station at the time the rebellion began. Every other vessel but those two had left before that day, except one, which sailed on the 11th, before the great outbreak was known: and before the necessity for martial law appeared. The Admiral stated in this return that four vessels were employed on services, which rendered them unavailable for service at Jamaica, on the occasion of the outbreak, and though one was ordered back, it did not come until the 24th November, some time after martial law was over. Five others, he stated, had sailed in September, to protect British interests elsewhere, or to cruise for slavers, leaving only one small frigate with 275 men, and two or three tenders, about 125 men, altogether about 300 men, at the time the rebellion broke out. The other vessels were at a distance, at Nassau, in the Gulf of Mexico, or other places, or "cruising for slavers." Thus then the whole naval force in the island was only 300 men, of whom, of course, not above a half or perhaps a third would be practically available on shore.*

* To this return was appended this note. "From the above it will appear that at the time of the outbreak, out of thirteen vessels, and 1,690 men, belonging to the division, eight vessels and 1,135 men were available at short notice for active service about the island," which only showed the strong partizan spirit of the person who appended the note, seeing that the return showed the contrary, unless indeed a very large latitude is given to the words "available on short notice," and when the statement was made in the House of Commons it will be seen that Mr. Cardwell contradicted it.

Then as regards the military force in the island—there were only three battalions in it: altogether about 1000 men, all told, of whom above 500 men were effective or required for garrison duty,* to guard the capital, the magazine, &c., leaving less than 500 at once available for military service; or a little afterwards, when a few volunteers were raised, about 800, and with sailors and volunteers not exceeding 1000. In the principal district there were never more than 450 soldiers and sailors, and in another not more than 500. Altogether the force at the disposal of the Governor was far from sufficient to secure order, and the Secretary of State afterwards so stated in the House of Commons.

About this therefore there could be no doubt. And one of the inclosures to the first despatch to the Governor was an urgent application from the Executive Council for 2,000 additional troops, which they earnestly recommended should be sought from Cuba.

And the Secretary of State afterwards stated that the Governor had not sufficient troops at his disposal to suppress the rebellion.

“From an erroneous impression of safety, the Governor had allowed nearly the whole of the naval force to leave the island, and he had not a sufficient military force at his disposal to secure the restoration of tranquillity.” (Hansard's Debates, vol. 184, p. 1819.)

* Mr. Eyre, in his sworn evidence before the Commissioners, stated, at the time the arrests were made (some days after martial law) there were only 1000 troops in the colony altogether, of whom 500 were kept in the disturbed districts; the other 500 were engaged in defending Kingston, the Camp, Newcastle, &c. (Minutes of Evidence, p. 90.) Col. Nelson, the principal military commander, stated that he had 336 soldiers and 120 sailors and marines, making altogether 450. (Ibid. p. 1018.) Another officer afterwards had 280 Maroons, and a third had 500 troops. This was the total force, until the reinforcements arrived at the end of the month. Soldiers and sailors together, it was under 1000, and adding a few volunteers, not greatly exceeding 1,100. The Lord Chief Justice afterwards called the force a mere handful (Charge); and Mr. Cardwell candidly stated it was not sufficient to secure order. (Hansard, vol. 1842, p. 1819.) The Author would here observe that in several places in the book where he speaks of the number of troops as 450, he had in his mind the force under Col. Nelson, the principal military commander, and ought to have so stated. There was another district in which there were 500 men.

The last thing to consider, before coming to the narrative of the events in question is,—*the state of the law* in Jamaica at the time the rebellion broke out, and the legal powers it conferred upon the Governor for the suppression of a rebellion. And as to this, again, there could be no doubt. For by a recent Act, which had, of course, received the assent of the Crown, an Act passed as lately as 1845, it was provided that the Governor, with the advice of his Council, might declare martial law on the occasion of any emergency in which they deemed it necessary. The Act runs thus:—

“Whereas the appearance of public danger, by invasion or otherwise, may sometimes make the imposition of martial law necessary; yet, as from experience of the mischief and calamities attending it, it must ever be considered as among the greatest of evils; be it therefore enacted that it shall not in future be declared or imposed but by the opinion or advice of a council of war, consisting, &c., and that the Governor should be authorised, with the advice of a council of war, in the event of disturbance or emergency of any kind, to declare any district under martial law.”
Jamaica Statute, 9 Vict.)

And that martial law meant what it had always been understood to mean—viz., such *military* law as was used in time of war, was plainly shown by the terms of an older island Act, of the time of its first settlement, which spoke of martial law as the Articles of War.*

Thus therefore the local law not only authorised martial law or the law of war in time of actual rebellion, but in time of *danger*, and therefore so long as the danger should last, whether before or after an actual *outbreak* of rebellion.

The reason of this was that the whole condition of the colony was peculiar and exceptional, without a possible parallel on earth; the elements of danger in

* Upon every apprehension and appearance of danger or invasion the Commander-in-chief shall call a Council of War, and with their advice cause the Articles of War to be proclaimed; upon which the martial law is to be in force, so that martial law meant the law of war. (Stat. Charles II.)

the event of a negro rebellion were so terrible and appalling, arising from their overwhelming preponderance of force, that special legislation, with the assent of the Crown, *only a few years before*, had provided a special and exceptional remedy in the exercise of martial law on the appearance of danger. The law, therefore, was as plain as anything could possibly be, that in case, not merely of *actual* rebellion, but of real and reasonable *apprehension* of a rebellion among the negroes, martial law—that is, such military law as is used in time of *war*—could be proclaimed and executed. Nor could there be any doubt that this would be reasonable, considering the peculiar character and condition of the colony, with a small white population of a few thousands scattered among a black population of 400,000, among whom a rebellion, if it once arose, would be certain to spread, as the Royal Commissioners stated that the rebellion which broke out actually *did* spread “with singular rapidity.” And one would also think that it would be equally reasonable that the exercise of martial law, if thus justified by danger, might be continued so long as the elements of danger continued to exist; that is, the disposition to rebellion, manifested by actual outbreak of it, and a disproportion of force for the protection of the whites, exposing them to danger and destruction.

The people of this country, however, were, in general not sufficiently acquainted with the character of the colony to understand the peculiar circumstances of its condition, or to realise the nature of a negro rebellion, or the necessity for measures of repression, infinitely more terrible than would ever be required in these countries, or even in any other colony or dependency of the Crown. And they would naturally receive the intelligence of such measures with the greatest repugnance and excitement; and it would be obviously easy to excite a prodigious agitation among them on the subject; by a

dexterous use of the favourite fallacy of the abolitionists, that because the blacks were free, and politically in the same position as the people of this country, therefore they were so morally, and socially, and practically, so that a rebellion among them would be no greater danger than among the English or the Irish, and no measures of repression would be needed in such a colony which would not be necessary in this country. It is obvious that this fallacy would tell with tremendous force when the news arrived that martial law had been exercised with great and terrible severity among the free negroes of a British colony. It had only to be said, "They are no more liable to martial law than you are ; martial law is no more necessary for them than for you ; therefore these terrible severities may, if allowed among *them*, be exercised among *you*," and a tremendous excitement was certain to be raised. So little are the multitude acquainted with the particular circumstances of Jamaica, that few would be aware how peculiar, how exceptional, is its position ; how terrible is the danger to the small white population, of a rebellion among the blacks ; and how, in such a case, severities might seem necessary, which would never be required in this country. Under such circumstances it might naturally appear that such danger could only be removed by the *distribution* of an adequate military force in every district sufficient to keep *down* this disposition to rebellion. This, at all events was the view taken by the Governor of Jamaica, and it was the view ultimately supported by a great amount of authority, and by the opinion of most intelligent and impartial persons.

How far it was correct, the reader will now be able to judge from the narrative which ensues ; and in doing so he will be able to form an opinion upon one of the most powerful combinations, and one of the most formidable agitations which ever had been raised in this country, which caused, indeed, as the Secretary of State observed, "an

excitement almost unprecedented in our times." He will be able, moreover, to form an opinion as to the nature of the measures taken to allay that agitation, and the degree to which those measures were justified; or, on the other hand, the degree to which that combination and that agitation caused injustice to be done to a servant of the Crown, who had, it was admitted, saved a fine colony from the fate of St. Domingo. These are questions of great interest, and no one will deny that the narrative of these events will form an important part of the history of our times. The Author can sincerely say that he has endeavoured to write their history in the spirit of truth and justice, and with the object of promoting a fair, just, and candid consideration of the subject. And his particular object in this Introduction has been 'to place the reader as nearly as possible in the position in which the authorities in the colony were when the rebellion broke out, and in the position in which the authorities in this country were when they received the intelligence of it. For it has now been abundantly established that the propriety of the measures taken for the repression of a rebellion in a distant colony must depend upon the *degree of the danger* which must depend upon the nature and character of the rebellion, and the causes from which it arose (especially with reference to the question how far they were deeply rooted, and of long growth) and the condition and circumstances of the colony, more particularly with reference to the numbers, and disposition of the population in rebellion, the tendency of the rebellion to spread, and the adequacy or inadequacy of the military force available for its suppression. In a word, as stated by Sir Alexander Cockburn in the Ceylon case, it is necessary to consider the spirit of the people, their disaffection to the Government and all the circumstances connected with the native population of the colony, especially previous rebellions. (Hansard, vol. 117, *vide ante*, p. iv.)

HISTORY

OF

THE JAMAICA CASE.

ON the 16th November, 1865, a despatch was received by the Secretary of State from Mr. Eyre, the Governor of Jamaica, verified by numerous enclosures, informing him that an insurrection had broken out among the negroes in that colony. That despatch disclosed that there had been a deliberate outrage by a large band of armed negroes upon a court of justice for a rescue of prisoners; that when, the next day, it was attempted to put the law in force against the rioters, a large band of armed negroes, summoned by signal, and evidently ready for the purpose, made prisoners of the police; and that the day after, a body of some hundreds of negroes made a murderous attack upon the magistrates, police, and volunteers, and massacred or wounded most of them, so as to destroy the civil force of the district, and then went on, as was believed, to continue a general massacre of the whites.

Governor Eyre to Mr. Cardwell, October 20th, 1865.
(Parliamentary Papers on Disturbances in Jamaica, page 1) :—

“ It is my very painful duty to inform you that a most serious and alarming insurrection of the negro population has taken place in this colony, and been attended with great loss of life and destruction of pro-

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perly. The outbreak commenced at Morant Bay, St. Thomas-in-the-East, and rapidly spread through the contiguous parishes.

"The circumstances stated in the Baron's letter were to the effect that on Saturday, the 7th October, whilst a black man was being brought up for trial before the justices, a large number of the peasantry, armed with bludgeons, and preceded by a band of music, came into the town, and, leaving the music at a little distance, surrounded the court-house, openly expressing their determination to rescue the man about to be tried, if convicted. One of their party having created a considerable disturbance in the court-house was ordered into custody, whereupon the mob rushed in, rescued the prisoner, and maltreated the policemen in attendance. On Monday, the 9th October, the justices issued a warrant for the apprehension of twenty-eight of the principal persons concerned in the disturbance of Saturday, and confided it to six policemen for execution.

"Upon the arrival of the police at the settlement where the parties lived (called 'Stoney Gut,' and about three or four miles from Morant Bay), *a shell was blown, and the negroes collected in large numbers, armed with guns, cutlasses, pikes, and bayonets.*

"They caught and ill-treated three of the policemen, putting them in handcuffs and administering to them an oath upon a Bible, which they had ready, binding them to desert the whites and join their (that is, the black) party.

"On that day (Thursday, the 12th), about half-past four p.m., I received a private letter from a Mr. Davidson, a magistrate of St. David's, which had been sent across the country, stating that it was reported the blacks had risen and murdered the Baron, two sons of the rector of the parish (Mr. Cooke), and several other persons; and stating that it was expected the rebels were coming along the line of the Blue Mountain Valley to destroy the properties contiguous thereto, and murder the white and coloured inhabitants. All the principal inhabitants of the district had been killed, and the entire volunteer force (with the exception of a few who escaped), consisting of twenty-two officers and men, nobly died at their posts, gallantly doing their duty."

The despatch disclosed that the negroes had risen in various other districts; that it was only by flight the white inhabitants saved themselves, and that the refugees were numerous, and endured the greatest distress, having to take shelter in the woods for days and nights, and being destitute of everything; that there was a general alarm and apprehension of a universal massacre of the whites; and that in point of fact the negroes did for several days continue their attacks, not only plundering and burning houses, but driving the whites away in terror for their lives.

It was disclosed that on the second day after the outbreak, there was another attack by a large party of the negroes at another place, where one or two whites found there, and who had not fled, were killed or left for dead. The Governor wrote to the Secretary of State :—

“ We steamed to Port Morant, and found the gun-boat had already taken on board the ladies and children, and other refugees (numbering about 100), *collected from the Bath, Plantain Garden, and contiguous districts.* Many of these unfortunate people had suffered great hardships and run great risks, some having been *days and nights in the cane-fields or in the woods*, without food or clothing, save what they had on, and subject to all risks which exposure at night in a tropical country entails. All were come away without any other possessions than the things they had on. The weather was extremely wet, and the little gun-boat, though a refuge from the rebels, could not afford to such a crowd either adequate shelter from the weather or accommodation of any kind suited to the requirements of delicate women and children. Lieutenant Brand, and those acting under him, were most kind and zealous in doing all they could ; and Captain De Horsey assisted by sending his medical officers to visit and cheer, and supply cooked medical comforts to the invalids. Still the night spent on board the gun-boat, and the subsequent voyage to Kingston, must have been one of great trial and suffering to the unfortunate refugees.”

The report of one of the officers (enclosed) stated :—

“ I stayed but a short time in Bath, and marched to the Rhine Estate. I found several ladies and gentlemen from the neighbouring estates, who had been taking refuge in the hills for three or four nights, were collected there. On passing through Bath I received information that a large party of the rebels had been there the previous evening robbing some of the stores, but the Maroons coming down in some force from the hills saved the lives of many who would most probably have been sacrificed.

“ At the Rhine Estate I halted for three hours to enable refugees to come in. Leaving the Rhine Estate, I kept the eastern side of the river, with a view to give protection to the numerous people who had hitherto been unable to escape. Captain Lake hearing that there were some wounded gentlemen lying in the Golden Grove Estate, I sent a mounted party to bring them in ; but an alarm being raised of a large body of men on the estate, ordered off Captain Ross with sixty men. He reports having found *a large number of them on the estate with cutlasses, who, on seeing the troops, attempted to escape.* Upwards of forty prisoners were made and several of the rebels must have been shot. The house in which I have made my head-quarters (Mrs. Patterson's) has been broken into and gutted by the rebels, and a pistol presented to her head, her husband *having narrowly escaped*” (p. 32).

So another officer wrote on the 13th :—

“ Embarked one subaltern and twenty-five men West Indian regiment, and proceeded to Port Morant and anchored there. *Picked up some families* in open boats and canoes. *Observing a great many rebels sacking Mr. Duffus' store at Bowden*, I cleared away after-pivot gun, and gave them one shot and two shell, which dispersed them. As they had *fired the place before leaving*, I landed a small party and put out the fire, bringing off six or seven prisoners. At 1 p.m. up anchor and went alongside Bowden's wharf to see if any of Mr. Duffus' things could be saved ; but finding everything totally destroyed, smashed, or stolen, I proceeded at once for Morant Bay, having collected about thirty refugees.”

The enclosures to the despatches contained matter which, coupled with well-known facts of a public nature, on the relative proportions of the black and white portions of the population, were calculated to create the most imminent peril and arouse the utmost alarm. It was notorious that at the last census the population of the island was about 450,000, of whom not more than 13,000 were whites. The black population used, it was well known, in the cultivation of the sugar-cane, formidable weapon slike cutlasses, three feet long ; and the circumstances of the colony, with reference to military force, were thus described by Mr. Eyre, at the moment, in an urgent appeal to the Governor of Barbadoes for aid :—

“ I have the honour to inform you that an insurrectionary outbreak of the most serious and alarming kind has taken place in this island. The barbarous massacre of a large number of gentlemen, being ministers of religion, magistrates, proprietors of properties, or persons otherwise interested in or connected with estates in this island, has taken place. A large amount of property has been destroyed ; numerous estates in high cultivation have had to be left entirely abandoned ; a large portion of the south-eastern, eastern, and north-eastern portion of the colony has been put under martial law ; and general apprehension and alarm exist lest the movement extend to the entire island, and the insurrection become a general one.

“ In this emergency a large portion of the troops stationed in this colony have been rapidly withdrawn from the head-quarters and distributed at various points in the island.

“ The whole of the troops in this colony do not exceed above 1,000 (exclusive of those at Honduras and Bahamas), and I cannot conceal from myself that such a number is utterly inadequate to suppress the insurrection in the districts where it now exists, and would not supply any troops

whatever for the assistance or defence of other portions of the colony should the outbreak, as is feared may be the case, unhappily extend to them. I have therefore most urgently to solicit your Excellency to direct that, if possible, 500 troops, or as many as you can spare, may be despatched to our assistance with as little delay as possible in Her Majesty's ship 'Urgent,' sent herewith for the purpose.

"It would be very desirable that the troops should be accompanied by as many medical officers as possible, and should include any artillerymen and light field-pieces that can be spared.

"It may be as well to bring to your Excellency's notice, as an additional reason for this urgency, the immense area of Jamaica, extending about 150 miles in length, and from 50 to 60 in breadth, and the physical features of which are of such a nature as at once to prevent a rapid intercommunication with distant points, and render exceedingly difficult all inland movement of troops, whilst they afford both shelter and supplies of food to the insurgents in fertile fastnesses of the mountains where a large portion of the peasantry reside.

"There is no intelligible cause for this sad outbreak, and nothing but the most prompt and vigorous measures will put it down."

All the accounts received indicated apprehensions of the intention of the rebels to continue their progress through the island and complete the work they had begun. Thus the magistrate's clerk of St. David's wrote to the Governor on the 12th, after narrating the massacre :—

"I have further learned that it is the *intention of the rebels to come into St. David's, and destroy property, and murder every respectable man. We are without protection. The police have been taken to Morant Bay, and the constabulary force being so small, would avail nothing among a large body of men against us.* I therefore would suggest to his Excellency respectfully (if not too premature) that a company of troops be sent to Yallahs, and one to Easington (if available), to protect the parish, which I consider to be in imminent danger." [Which was immediately ordered.]

So Captain Ross to the General :—

"Morant Bay, October 13, 1865.

"I have the honour to report, for your information, that the force under my command disembarked here this day, and will encamp. The civil authorities have been massacred, with one or two exceptions, by the natives of this, and the rioters are now reported to be destroying the plantations in the vicinity."

So Mr. McEvery, J.P. :—

"Richmond Vale, October 12, 1865.

"I am sorry to inform you that the people down the valley have risen ; they have burnt down the Court-house, &c., at Morant Bay, released all

prisoners, and killed the under-noted white people. A released prisoner who has come this way states that it is the mob's rumour that *they are to proceed with their work of devastation* up this way; therefore I have written you that you may use your discretion as to what is to be done, and to make it known to those it concerns."

So, the following was in a letter from Mr. Davidson, J.P., to Governor Eyre, dated—

"October 12, 1865.

"It is the intention of the mob to go up the valley, and onwards."

The character and circumstances of the original outbreak, as disclosed in the despatch, and its continuance for two or three days, abundantly indicated that, from its very nature, it must have been intended as the commencement of an insurrection which, by means of community of race and sympathy of class, must be likely to spread with rapidity among the black population, whether or not the conspiracy was more than local. And the tenor of a paper found, with the names to it of the active leaders in the massacre who were still at large, amply confirmed this view, as it contained an urgent and passionate appeal to arms, and amounted in terms to a proclamation of war. It must have been obvious, from the very fact of a massacre by so large a body of men, that the perpetrators of it must have some ulterior object; for they would hardly suppose that the whites would let it pass without an attempt to avenge it, and the whites could hardly suppose that the perpetrators of it would quietly await their vengeance. The nature of the massacre, therefore, itself portended insurrection. But, further, the circumstances disclosed in the despatch showed that rebellion had been preparing for some time, and that, though the particular outbreak was probably precipitated by the events of the two previous days—the original riot, and the attempt to apprehend the rioters—yet the facility with which hundreds of armed negroes were collected in a moment by the sound of a shell, to surround and seize the police, indicated significantly that they had been prepared and were perfectly

ready for the outbreak. Moreover, on the very day it took place, the leaders addressed an insolent menacing letter to the Governor, which was enclosed in the despatch, and clearly meant rebellion. And the despatch also enclosed a remarkable paper which had been found in the stronghold of the insurgents, and signed by several of the ringleaders who were still at large, shewing that they intended rebellion, and knew that it was war. It ran thus :—

“The white people sent a proclamation to the Governor to make war against us ! Leave your houses—take your guns ! If you haven't guns take cutlasses. Blow your shells—roll your drums. Any men you find on the way, take them down with their arms. War is at hand, my blackskins—war is at hand !”

The despatch disclosed that, under a local act of the present reign, expressly authorising martial law, not only in time of rebellion, but in time of danger or apprehended rebellion, the Governor, with the assent of the Council, including the Chief Justice, the Commander-in-chief, the Attorney-General, and the principal magistrates of the colony, had declared martial law in the district of the scene of the outbreak, and that the Commander-in-chief had committed its execution to an officer appointed to act as military commander of the district. It further appeared that various military detachments were sent out by that officer in various directions, to capture the insurgents and prevent the insurrection from spreading ; and that these officers had their orders from, and reported to him, and not to the Governor ; that their reports went through the military commander of the district to the Commander-in-chief, and from thence were merely sent to the Governor to be enclosed in his despatch to the Secretary of State (copies being also sent by the Commander-in-chief to the Secretary at War) ; and the dates disclosed that the Governor could hardly have had time to read them. From these reports it appeared to have been the impression of the military commander and the officers that

the insurgents engaged in the original outbreak would disperse themselves through the district with the view of rousing the rest of the population and continuing their outrages, and that on the approach of the military they would seek refuge in the woods and mountains; and that, therefore, negroes, who on the approach of the troops instead of coming to give them information and assistance, flew from them or were found lurking in the bush, might be presumed to be rebels, and to be the escaped insurgents, and that, under this impression, they on various occasions allowed their troops to fire at them. It did not appear that the Governor had given any particular orders or directions; and it only appeared that a few days after martial law was declared he drew up a minute of suggestions to the military commander, the effect of which was that the troops should try to "cut off or capture the rebels." No particular orders were given by him.

The despatches disclosed that, as by the Colonial Regulations, the Governor had only the general direction of the disposition of troops, and the details were under the direction of the Commander-in-chief; so that the declaration of martial law was the act of the Governor in Council, its execution was under military direction; that he gave only the most general directions "to cut off or capture the rebels;" and that the officers employed had their orders from the military commander, and reported to *him* as *responsible* to him. It appeared, indeed, upon the face of the enclosures in the despatches, that the Commander-in-chief was extremely jealous of his military authority, and allowed no interference with it, and that there had actually been a controversy of some acrimony between him and the Governor on this very point.

It happened that the very next despatch (No. 2, Mr. Eyre to Mr. Cardwell, October 23rd, 1865) was, in fact, a controversy between the Governor and the Commander-in-chief, who was evidently a great stickler on this very

point, and the Governor, in maintaining his authority, could only put it as high as this. He wrote in these terms :—

“To my own mind the Colonial Regulations are clear and unmistakable. That all dispositions of troops within the command are to be directed by the Governor, *but carried out in their details by the senior military officers.*”

It further appeared on the face of the enclosures in the despatch, that the Commander-in-chief exercised full supervision, as he pleased, over these reports, and on one occasion expressed his disapproval, but *only* on one occasion.

These reports, some of which were enclosed, all addressed to the military commanders and officers at places considerably distant from the seat of Government, indicated an impression of the prevalence of rebellion, and disclosed to the military commanders such measures as had been taken, and of which in no instance did they see any reason to disapprove—thus, for instance, one of them wrote thus to the *Commander-in-chief*:—

“I have the honour and the pleasure to report, for the information of your Excellency, that I marched to-day from Amtrolly St. David into the very heart and stronghold of the rebel country. We started at an early hour, having received most correct information of the locality of the insurgents. There can be no doubt, from what I have witnessed this day, that the rebellion is much more serious and more regularly organised than any we had at all expected; not only have the entire of the disaffected villages been vacated, but all over the country there are several mounds erected, and flags of various colours (preconcerted signals) are flying from all commanding positions, and it is my duty further to inform your Excellency that the class of people who are employed in this rebellion are not the poor, but a class of small landholders who are, in every sense of the word, freeholders. Finding this to be the case, and with the concurrence of three magistrates of experience, I set fire to the entire of the vacated houses. Two pistols were found, some impromptu drums, and numerous indications of meetings and assemblies in their chapels (native Baptists) and villages. The amount of horses, pigs, poultry, and comfortable clothing left behind by the people, as also the amount of coffee and provisions of all kinds, indicate the utmost amount of comfort on the part of the people composing the rebellion, who, unfortunately (aided by the natural advantages of the country, and numerous well-mounted scouts), gave notice of our presence and fled. We, however, secured six prisoners,

whom I would have shot, but from the fact of their being unarmed ; I now regret I did not do so, as they are no doubt rebels. We have, however, killed between fifteen and twenty of them at extraordinarily long distances, having discovered since several groups of them on the hill sides, and in trees."

The reports disclosed, it will be seen, that the negroes not actually taken *in arms*, *i.e.*, with arms in their hands, but under such circumstances as conveyed to the officers the impression that they were rebels, were shot ; and the reports disclosed, as already mentioned, an impression on the part of the officers, which was not, at all events, at first, corrected by the commanders, that men of the colour and class of the insurgents, found in bodies or in parties, lurking in the bush, or flying from the troops, were to be presumed to be rebels, and might be dealt with as felons flying from apprehension at common law. Thus to give one more instance out of many, one of the officers reported to the military commander on the 25th October :—

"On the 23rd instant I visited several estates and villages. The people had, for the most part, deserted their dwellings, and taken with them any plunder they may have had, although leaving several traces behind them. I burnt seven houses in all, but did not even see a rebel. During the day I searched the whole country round about, but the state of the roads through the bush—mud up to the horses' knees—prevented me going quite as far as I would have wished. I, however, consider the state of the country quiet throughout this district. I caused information to be given to all the negroes round about that if they returned to their work they would not be molested, provided they were not actual murderers, or concerned in a riot where murders were committed. In the evening 140 returned to Mr. Harrison, and a large number came to other planters on the morning of the 24th. On returning to Golden Grove in the evening, sixty-seven prisoners had been sent in by the Maroons. I disposed of as many as possible, but was too tired to continue after dark. The rain and roads had completely knocked up both horses and men this day. On the morning of the 24th I started for Morant Bay, having first flogged four and hung six rebels. I beg to state I did not meet a single man upon the road up to Leith Hall : there were a few prisoners here, all of whom I flogged, and then proceeded to John's Town and Beckford. At the latter place I burnt seven houses and one meeting-house ; in the former, four houses. We came so suddenly upon these two villages that the rebels had no time to retire with their plunder ; nearly 300 rushed down into a gully,

but I could not get a single shot, the bushes being so thick. We could all distinctly hear their voices in the wood all round, but after the first rush not a man was seen, and to follow them with any advantage impossible."

From these reports, it abundantly appeared that during the excitement of the first few days (for it was only then) negroes were thus dealt with, as it plainly appeared, under the honest, though, probably, in some cases, mistaken impression, above described.

The despatch further disclosed, however, that courts-martial had been held upon prisoners, and that many had been executed by sentences of such courts-martial, in one of which it was also stated the *Attorney-General of the colony* had sat in his capacity of colonel of militia. And while on the one hand it did not appear that the Governor had any knowledge, until after the acts were committed that men were shot in the country under the circumstances described (and which, in no instance, was disapproved of by the military commanders); on the other hand, all the instances of execution of which he appeared to have had any knowledge, were executions under sentences of court-martial, for the authority of which he had, it also appeared, the sanction of the *Attorney-General of the colony*. He wrote:—

"We had again sent on in advance, as far as Bath, a detachment of thirty-five men, for the purpose of protecting women and children. We ascertained also that some of the rebels were in the immediate vicinity of our camp, and a party of twenty-five men was sent out at 2 a.m. in the morning, to try and surprise some in their huts. Two men and some women were thus captured. One of the men was a principal in the disturbances, of the name of Flemming; he was tried by court-martial and at once hung. The second, quite a young man, was flogged. The women were released.

"The prisoners on board the 'Wolverine,' were landed and five of them tried by court-martial, four of them were hung on the stone archway of the burnt Court-house, near to which all the massacres had taken place on the 11th. One prisoner was flogged. *The Attorney-General of the colony*, in his capacity of a captain of militia, sat as a *member of the Court*.

"On the 16th Oct. at Port Antonio, a court-martial sat to try prisoners, and twenty-seven were found guilty and hung. Many rebels have been

captured and several court-martials have been held and capital punishments inflicted (p. 7). It may be stated generally that a large number of rebels have been shot with arms in their hands, and that a great many prisoners have been tried and hung, shot, or flogged, and that a considerable number of prisoners are still on hand awaiting trial by court-martial."

It appeared, however, that these trials all took place under military authority, and it did not appear that the Governor had, in any one instance, directed a trial to take place, or a court-martial to sit, or a sentence to be executed, or had done anything at all in relation thereto, beyond proclaiming martial law; except that in some few cases he had ordered the arrest of persons out of the declared district whom he considered to have been mixed up with the rebellion, and their conveyance into the district to await their trial by the military authorities, if they should consider the cases proper for such trial.

This was particularly illustrated in one of those cases which, for various reasons, produced more impression than any other, and was selected throughout as the principal ground of charge against the Governor—the case of Gordon, a coloured man of great influence among the negroes, who for some time back, as the despatches disclosed, had been engaged in a system of agitation among them, and had used language calculated to incite them to insurrection. The Governor, in a former despatch referred to, and the present one, had sent a copy of an inflammatory address issued and circulated by this person for a public meeting at Morant Bay on the 29th July, headed "State of the Island," and couched in violent and exciting terms:—

"Poor people! Starving people! Naked people, &c. You who have no sugar estates to work on, nor can find other employment, we call on you to come forth. Even if you be naked, come forth and protest against the unjust representations made against you by Mr. Governor Eyre and his band of custodes. You don't require custodes to tell your woes; but you want men free of Government influence—you want honest men.

"People of St. Thos. ye East, you have been ground down too long

already ; shake off your sloth. Prepare for your meeting. Remember the destitution amidst your families and your forlorn condition ; the Government have taxed you to defend your own rights against the enormities of an unscrupulous and oppressive foreigner, Mr. Custos Ketelholdt. You feel this, and no wonder you do ; you have been dared in the provoking act, and it is sufficient to extinguish your long patience. This is not the time when such deeds should be perpetrated ; but as they have been it is your duty to speak out, and to act, too ! *We advise you to be up and doing on the 29th, and maintain your cause, and be united in your efforts ;* the causes of your distress are many, and now is your time to review them. Remember that he only is free whom the truth makes free—you are no longer slaves, but free men ; then, as free men, *act your part* on the 29th. If the conduct of the Custos in writing the despatch to silence you be not an act of imprudence, it certainly is an attempt to stifle your free expression of your opinions. Will you suffer this ? Are you so short-sighted that you cannot discern the occult designs of Mr. Custos Ketelholdt ? Do you see how every vestry he puts off the cause of the poor until the board breaks up, and nothing is done for them ? Do you remember how he has kept the small-pox money, and otherwise mis-distributed it, so that many of the people died in want and misery, while he withheld relief ? How that he gave the money to his own friends and kept it himself, instead of distributing it to the doctors and ministers of religion for the poor ? Do you perceive how he shields Messrs. Herschel and Cooke in all their improper acts ? Do you know how deaf he is on some occasions, and how quick of hearing in others ? Do you remember his attempt at tyrannical proceedings at the elections last year and this ? Inhabitants of St. Thomas-in-the-East, you have been afflicted by an enemy of your peace—a Custos whose views are foreign to yours. Do your duty on the 29th day of July, 1865 ; try to help yourselves, and Heaven will help you."

This, it will be observed, was originally issued for a meeting at the end of July, and apprehensions had been excited (as was disclosed in the despatch) of a rebellion to break out on the 1st August, but the precautions then taken had prevented the insurrection which had been then apprehended, and that the address had been kept in circulation by its author since that time ; and it will be further observed that it held up to execration the very persons who were afterwards massacred on the occasion of the outbreak by persons in close connection with its author. It should be mentioned here that a subsequent despatch discovered that there had been a system of agitation thus described in a letter from one of Gordon's associates to another, the writer being editor of a paper :—

"I could scarce command vital thought enough yesterday to do justice to your meeting, and against the wish of Wn. I wrote the feeble editorial that appears to second the noble exertions of the Vere people. *What I desire is to shield you and them from the charge of anarchy and tumult that in a short time must follow these powerful demonstrations.* How I succeeded you must judge yourself." (September 11, 1865.)

The despatch announcing the outbreak of rebellion disclosed that at that time—that is only two months previously—there had been very serious apprehensions of a rising of the negro population in various other districts of the colony, and that it had only been prevented by a prompt recourse to precautionary measures. And it disclosed that on that occasion the Governor had it represented to him by one of the principal functionaries of the island, who held a position somewhat resembling that of a lord-lieutenant in this country, that Gordon was inciting the negroes to insurrection by the circulation of an inflammatory address, and that this had been since kept up by him. And the despatch also disclosed that the very first intimation the Governor had of the disturbances connected them with this man. It pointed him out as the author of them. The Governor wrote to the Secretary of State:—

"In a previous despatch I have called attention to the necessity I was under in August last of sending men-of-war to the parishes of St. James, Trelawney, St. Elizabeth, Hanover, and Westmoreland, to intimidate the malecontents and prevent an expected rising. These measures were successful. In the recent case of St. Thomas-in-the-East, the Government had not sufficient money, and precautionary measures were too late."

In August the Government had written to the Secretary of State mentioning that the Custos of St. Thomas-in-the-East had sent to him an explanatory address, printed and circulated among the people, and which he believed was put forth by one Gordon. This was the address in which he incited the negroes to be up and doing, &c. One of the enclosures disclosed that a copy was seized in the post-office, and that another copy was found posted up on a tree opposite the house of Gordon's agent. (Parl. papers.) (Part I., enclosure 58, p. 35.) This was the address to the

people of St. Thomas-in-the-East, the scene of the disturbances, telling them to be up and doing, and mentioning by name in the strongest terms of denunciation the Custos and the other magistrates, all victims in the subsequent massacre. The first communication the Governor had as to the rising was from the Custos, the principal victim, and it was in these terms :—

“Baron VON KETELHOLDT to Governor EYRE,

“Morant Bay, October 10, 1865.

“Sir,—I am sorry to say that Mr. G. W. Gordon's inflammatory addresses have borne fruit earlier than I at least anticipated. On my arrival here, a few hours ago, I found the respectable people of the town in a great state of alarm and excitement, in consequence of demonstrations of not only disaffection, but of open violence, by a body of men who came to the Court-house on Saturday armed with bludgeons, and who successfully rescued him [*sic*]. The circumstances that have since happened are detailed in an official despatch to your Excellency's Secretary. The ringleader in this affair is a man of the name of Paul Bogle, who generally acts with Mr. G. W. Gordon.”

This was further confirmed by an insolent manifesto addressed to the Governor next day, by the leader of the massacre, and signed by Bogle, McLaren, Lawrence, and others, all known associates of Gordon, and in which they said that they should be compelled to “*put their shoulder to the wheel.*” This was enclosed in the despatch.

The despatch further disclosed that the Commander-in-chief of the colony had called the attention of the Governor to evidence which to him appeared strong that the person already alluded to was in constant communication with the active leader of the insurrection, and had been issuing inflammatory addresses calculated to incite the people to rise. That other official communications called the attention of the Governor to this person, and that he accordingly, upon sworn information of the fact of his recent correspondence with the leader of the massacre, directed his arrest and conveyance to the district in which martial law was in force, and left him there, but that he had not taken other and further measures with regard to him, not being himself in the district. And though the

despatch announced the execution of this person, and stated the Governor's approval of it, the enclosures showed that the trial and execution took place by military authority. The Commander-in-chief wrote thus to the Governor a few days after the outbreak :—

“Important information.—Mr. Burk, post-office, reports Mrs. Gough (Gough, Postmistress, Port Morant) can swear George [Gordon] was in constant communication with Bogle, and published a counter proclamation to yours. Queen's advice. A bundle came by post ; she took out one and put it in a pigeon-hole in post-office. Search and you will find the same. The Custos has just been with me on the subject.”

And the Governor thus wrote to the Secretary of State on the subject :—

“There was one very important point to be decided upon. Throughout my tour in the ‘Wolverine’ and ‘Onyx’ I found everywhere the most unmistakable evidence that Mr. Geo. Wm. Gordon, a coloured member of the House of Assembly, had not only been mixed up in the matter, but was himself, through his own misrepresentation and seditious language addressed to the ignorant black people, the chief cause and origin of the whole rebellion. Mr. Gordon was now in Kingston, and it became necessary to decide what action should be taken with regard to him. Having obtained a deposition on oath that certain seditious printed notices had been sent through the post-office, directed, in his handwriting, to the parties who have been leaders in the rebellion, I at once called upon the Custos to issue a warrant and capture him. For some little time he managed to evade capture ; but finding that, sooner or later, it was inevitable, he proceeded to the house of General O'Connor and there gave himself up. I at once had him placed on board the ‘Wolverine’ for safe custody and conveyance to Morant Bay.

“Great difference of opinion prevailed in Kingston as to the policy of taking Mr. Gordon. Nearly all coincided in believing him to be the occasion of the rebellion, and that he ought to be taken, but many of the inhabitants were under considerable apprehension that his capture might lead to an immediate outbreak in Kingston itself. I did not share in this feeling. Moreover, considering it right in the abstract, and desirable as a matter of policy, that whilst the poor black men who had been misled were undergoing condign punishment, the chief instigator of all the evils should not go unpunished, I at once took upon myself the responsibility of his capture.

“Having placed Mr. Gordon on board the ‘Wolverine,’ and having obtained a supply of arms and ammunition from General O'Connor for the use of the Maroons and others, I at once set off again in the ‘Wolverine,’ about noon on the 17th of October, on my return back to Morant Bay.”

"On the 20th, having put on shore the prisoners (at Morant Bay), including Gordon, *I proceeded to Kingston.*"—*Ibid.*

"P.S.—October 23. Having kept my despatches open, I am enabled to add that Gordon has been tried by court-martial, at Morant Bay, and sentenced to be hung. The execution was to take place to-day."—*Ibid.*

"I have seen the proceedings of the Court and concur both in the justice of the sentence, and in the policy of carrying it into effect. *It is absolutely necessary for the future security of Jamaica* that condign punishment should be inflicted upon those through whose seditious acts and language the rebellion has been originated.

"I enclose copies of the report from the General, and of my letter in reply."

The enclosures in the despatch disclosed distinctly that the trial had taken place in the disturbed district, under military authority; for the military commander of the district reported upon it to the Commander-in-chief of the colony, stating that the whole proceeding had been directed by himself, and submitting it to the approval of the Commander-in-chief:—

"*Brigadier-General Nelson to Major-General O'Connor.*

"Sir,

"*Morant Bay, October 21, 1865, 8 P.M.*

"After six hours' search into the documents connected with the case of G. W. Gordon, I came to the conclusion that I had sufficient evidence to warrant my directing his trial.

"I prepared a draft charge and précis of evidence for the Court.

"It assembled about 2 p.m. this day, closed its proceedings after daylight; the President having transmitted them, I carefully perused them.

"The sentence was 'death.'

"I considered it my duty fully to approve and confirm. To-morrow being Sunday, and there existing no military reason why the sentence should not be deferred, I have preferred to delay its execution till Monday morning next at 8 o'clock.

"Had it been necessary to carry it out on the Sabbath I should not have hesitated.

"I enclose the whole of the proceedings of the Court for your information, as you may desire to see what evidence led to the conviction of so great a traitor. Hoping for your approval, I remain, &c."

A subsequent despatch transmitted these proceedings, which were extremely lengthy, but the substance appeared to be this. The charge in substance came to this, that he had incited the active ringleaders to the insurrection. The substance of the evidence against him was this.

There was strict legal evidence that he had at a meeting in June or July, at which two of them were present, used language directly calculated to have that effect :—

“John Anderson (a negro) being now examined on oath said :—In June or July, I saw Mr. Gordon at Stoney Gut (Bogle's place). I saw McLaren there. I heard Gordon say to Bogle, ‘They are going to hold a meeting, and if we don't get the back lands, all the “buckra” (*i.e.* whites) must (or will) all die.’ Bogle got McLaren to go up to the mountains to look for men, and come to Morant Bay.”

Then there was strict legal evidence that one of these two (whose statements—after the above, which was some evidence of a conspiracy with the accused—would be evidence against him) had used language of the like import :—

“James Gordon (a negro) being sworn, said :—In August, McLaren went up the valley, and said that they must hold a meeting, because he wants to gather up men.”

Both these witnesses had made depositions, which were read, after they had given their strictly legal evidence, and other depositions were used in confirmation ; but the above, it will be seen, was strictly legal evidence. In addition to the above, the last-mentioned witness, after his deposition was read, stating in effect that McLaren said he had a letter from Mr. Gordon, stating that there was to be a war, and that the people must prepare for it, and would get their lands free. A letter of the prisoner telling Bogle and others of the known leaders to go to the post-office at Morant Bay for papers was put in, and the post-mistress produced a printed copy of the inflammatory address above alluded to, found in a packet addressed to one of them. There was a great deal of evidence, chiefly depositions, in confirmation ; but the above was strictly legal evidence. The prisoner, in his defence, admitted that the circumstantial evidence against him was very suspicious, and though he had several days' notice of his trial, called no witness save one, and that upon a comparatively collateral point (to account for his absence from the meeting), and

this witness did not support his case, but his evidence rather went to negative it. The prisoner wanted to call some one else forward, but was told he was not at the place. He made a long address upon the evidence, which had taken several hours, and his own address must have taken at least an hour. The Court having sat six hours, consulted together, and, as already stated, found a verdict, which the military commander, having perused the evidence, approved.

The military commander having submitted the proceedings to the Commander-in-chief for approval, the latter approved, and wrote to the Horse Guards that he entirely concurred. The Commander-in-chief, who, it is very important to show, was, as already indicated, on bad terms with the Governor, and wrote to the Horse Guards without communication with him, sent the proceedings to him, with a request for their immediate return, and the Governor accordingly at once returned them with a letter expressing his approval of the sentence. The Governor, in his letter to the General commanding-in-chief, approving of the sentence (a letter which was enclosed in the despatch to the Secretary of State), expressly stated that he approved upon the ground, not only of the justice of the sentence but the necessity for its execution, in order to put down the spirit of rebellion; distinctly stating that "it would be hopeless to attempt to put it down without making an example of the guilty agitator, who would justly meet the same punishment as those whom he misled." For he wrote in these terms, returning the report of the proceedings, and approving of the sentence:—

"I have no doubt that it is entirely due to his agitation, bad advice, and seditious language amongst the peasantry of this colony that the rebellion broke out, and the massacre of so many gentlemen and the destruction of so much property ensued.

"I believe that were condign punishment to fall only on the ignorant people who have been misled into rebellion, and the educated coloured man who led to that rebellion to escape, a very unfortunate impression would

be produced upon the public mind, which in the present state of this colony might lead to very serious results. *It is only by making it plain to the entire population that the guilty agitator and user of seditious language will meet the same punishment as the uneducated tools whom he misleads, that we can hope to check and put down the spirit of disloyalty and disaffection already so rife in the land, and which may at any moment occasion in other parishes outrages similar to those which have recently occurred in St. Thomas-in-the-East.*

"I received your Excellency's letter at 4.30 p.m., and I return the documents contained in it without delay, as requested."

At the time of the execution of Gordon, as the author of the rebellion, took place, its active leaders were at large. Next day, however (on the 24th October), ten days after martial law was declared, the chief was captured and executed. Within a week from that time, the Governor took measures with a view to an amnesty.

The despatch disclosed as that there was a general state of disaffection and disposition to rebellion throughout the island; and that although the particular outbreak had been in a few days subdued, yet there was imminent danger of its renewed outbreak in other districts of the colony, and that in such event there would be imminent danger of its becoming universal, and involving the most disastrous consequences. And this was put forward from the first as the justification of the severities employed. And in subsequent despatches, the same representation was made of imminent and overwhelming peril, notwithstanding the repression of the particular outbreak:—

"Humanly speaking, I believe that the promptitude and vigour of action which has at once grappled with and punished the rebellion has been the saving of Jamaica. The whole colony has been upon a mine which required but a spark to ignite it. Disaffection and disloyalty still exist in nearly all the parishes of the island, and had there been the least hesitation or delay in dealing with them in the parishes where they became developed in rebellion, I confidentially believe that the insurrection would have been universal throughout the entire island, and that either the colony would have been lost to the mother country, or an almost inter-

minable war and an unknown expense have had to be incurred in suppressing it.

"I trust, Sir, that you will fully bear these circumstances in mind, and that in doing so you will not regard the just severity which has been exercised otherwise than as a merciful substitute for the much larger measure of punishment which would have had to be executed had the rebellion been allowed time to gather head and extend itself. It is difficult to arrive at a correct estimate of the number of people engaged in the rebellion. The districts where it broke out, *and into which it spread*, are very populous. It is a remarkable fact that, so far as we can ascertain, the rebels at Morant Bay did not proceed in any considerable numbers to the adjacent districts, but the people of each district rose and committed the deeds of violence and destruction that were done within it. This fact shows *how widespread the feeling of disaffection is, and how prepared the people of each parish were to catch the spirit and follow the example of their neighbours*. It shows, too, *the extreme insecurity which yet exists in nearly all the other parishes of Jamaica where the same bad spirit prevails*. In the lately disturbed districts the rebellion is crushed; in the others it is only kept under for the present, but might at any moment burst into fury."

The despatch disclosed that no sooner had the *outbreak* of rebellion been suppressed, than the Governor was anxious to declare an amnesty to those engaged in that outbreak, without reference to the question of the continuance of measures for the repression of the rebellion, but at the advice of his Council, delayed the proclamation of the amnesty until the arrival of reinforcements. He then, having obtained the assent of the Commander-in-chief, *only upon the understanding that the amnesty should not interfere with martial law*, published the proclamation of amnesty, but only on the condition that those who sought to take advantage of it should *come in at once*, and with the express exception of those guilty of murder or arson. The Governor in his first despatch, dated only a week after the outbreak, wrote :—

"If no further outbreak occurs I hope to be able, in a short time, to proclaim a general amnesty, except to actual murderers upon the rebels coming in and submitting to the Queen's authority, and I yet hope that

the disturbed districts will be sufficiently quieted in time for the sugar crops, now nearly fit for cutting, to be reaped."

And a week afterwards he wrote to the Commander-in-chief :—

"From the reports just received from you, from Brigadier Nelson and Colonel Fyfe, I am the more confirmed in my views that the time for an amnesty has arrived.

"As I gather from the Brigadier's letter to you that he has received and referred back to you my official project of an amnesty and certain military arrangements, I should be glad, as soon as possible, to receive your views with regard to the amnesty, which in my opinion should (unless some objection or difficulty exist of which I am not aware) be at once proclaimed ; and it will necessarily take a couple of days to get them printed and sent for distribution and posting.

"The amnesty would not interfere with the martial law, or with the disposition of the troops."

The arrangements referred to here as proposed by the Governor in order to admit of an amnesty, and with a view to the termination of martial law, were described in a separate letter, of the same date, recommending that the reinforcements about to arrive should be distributed through the country, so as to have by their presence a quieting effect.

To this arrangement, however, the Commander-in-chief objected, and wrote in effect what amounted to a refusal.

The Governor, therefore, on the eve of the amnesty, had to engage in a controversy with the Commander-in-chief as to the mode of distributing the expected reinforcements, and thus wrote to him explaining the grounds of his proposed arrangement, and his reasons for adhering to it :—

"In reply I have to call your Excellency's attention to the following facts :—

"1st. Neither war nor actual rebellion exist at present in the western districts : there are no parties in arms against us, nor is there any organised body of negroes, so far as I am aware ; consequently there is at present no requirement for a large force in any one position, and no likelihood of any serious opposition being made to a trained military body of even fifty men

only, aided, moreover, as they would be by volunteers, police, or the resident settlers in the case of any disturbance.

“Even in the districts to the eastward, where the rebellion actually broke out, there was no attempt to resist an organised force of only thirty-five men marched through the heart of the disturbed district from Port Morant to the Rhine beyond Bath.

“2ndly. The principal positions at which military support is considered to be required for a time are comparatively isolated from each other with no very rapid or constant intercommunication, and that an outbreak might occur at any one of them, and the white population be massacred, and property destroyed, as at Morant Bay, before aid could be rendered from a position only a few hours off in point of time. A steamer would not remedy this liability.

“3rdly. In the existing state of matters in Jamaica, with seditious language, expressions of sympathy with the rebels of the eastern districts, or positive threats openly and publicly made use of in many places, it is essential that such arrangements should be made by obtaining the support of small bodies of military as would enable the Government to capture and punish the offenders without incurring the risk of allowing an actual rising of the negro population to take place and perhaps gain head.

“What is now required in the western provinces is not to undertake military operations where no actual rebellion exists, but to make such a disposition of the forces available for service in the colony as will prevent rebellion breaking out, will, as far as such can be provided for, render life and property safe, and will give a feeling of confidence to the settlers.

“5thly. That the arrangements specified in my letters of the 27th instant, and of to-day, were carefully considered by myself and my constitutional advisers, with a full knowledge of the country, and with all the information obtainable before us as to the condition of the different districts and the state of feeling prevailing in them.

“6thly. I have already informed your Excellency in my letter of the 27th instant, that whilst considering it necessary for the present to dispose troops as therein suggested, I hope that in the course of some little time, and as the state of feeling amongst the negroes becomes modified, many of the stations might be withdrawn and the troops concentrated; a change which, when it can prudently be made, I shall be happy to consider with your Excellency.

“On these grounds, and for the considerations stated amongst others, I must again request your Excellency to carry out the arrangements specified in my letters.”

This was on the 29th October, a date for more reasons than one to be observed, and next day—on the 30th—so anxious was the Governor to commence carrying out a

policy which might enable him to terminate martial law in a short time, that even while this controversy was going on, he published the amnesty.

As the nature and import of this measure are extremely important with reference to subsequent measures, and the comments to which they gave rise, especially the continuance of martial law, it is important to observe the terms of the proclamation and the circumstances under which it was issued. The Commander-in-chief's assent to it had been obtained, and on the understanding that it should not interfere with martial law. It was issued while a controversy was still pending as to the distribution of reinforcements, on which the Governor relied as the only means of enabling him to terminate martial law; and it expressly made it a condition that parties who sought to take advantage of it should *come in at once*. Lastly, it expressly excepted the graver crimes:—

“Whereas we are certified that through the zeal and energy of our civil, military, and naval forces, the wicked rebellion lately existing *in certain parts* of the county of Surrey has been subdued, and that the chief instigators thereof and actors therein have been visited with the punishment due to their heinous offences: and whereas we are further certified that the inhabitants of the *said districts, lately in rebellion*, are desirous to return to their allegiance: Now know ye, that, in our royal clemency and mercy, we do issue this our royal proclamation, hereby notifying that we do grant a general amnesty and pardon to all persons in the aforesaid districts who shall *at once come in and submit themselves* to our royal authority, by reporting themselves as so disposed, to the civil, military, or naval authorities, excepting only such persons as have been actual participators in the crime of murder, or of arson, such persons as shall be found in arms, or with stolen property in their possession, after this our royal proclamation; and such persons as are now awaiting trial: And we do further notify to all persons concerned in the late insurrection and rebellion, that it is our royal command that they do forthwith restore to the proper owners, or deposit with our civil, military, or naval authorities, all stolen property or plunder of whatsoever kind. And we do further enjoin all our loyal and loving subjects to refrain from harbouring, and to give up, to be dealt with, according to law, all persons (excepted as aforesaid) who have been actual participators in the crime of murder or of arson, all such persons as shall be found in arms against us, and all such parties as may have stolen

property in their possession, under pain of incurring our highest displeasure, and the penalties by law attaching."

Much comment having been afterwards made upon the recital of this proclamation as acknowledging that the rebellion was entirely subdued, it is necessary first to notice that this was not what was stated, but that it was subdued in *the district where the actual outbreak took place* (and indeed the context showed that it was even there rather the actual insurrection which was subdued), and that it implied that in the *other portions* of the island it was *not* subdued, and the inhabitants were *not* ready to return to their allegiance.

And numerous documents in the despatches afterwards received show that this was the case, or, at all events, the general belief.

While still engaged in this controversy as to the distribution of the military, which for the time thwarted the plan he had last formed for dispensing with martial law, the Governor wrote to the Secretary of State, enclosing the proclamation of amnesty, and informing him that, though the *districts lately in open rebellion* were quiet, yet that the accounts received from other parts of the island caused him great anxiety; and that, though no *actual* outbreak had taken place, yet in every part there were many prepared, if a fitting opportunity offered, to act just as the negroes did in the disturbed district. But that he had directed a disposition of the troops which, if carried out, would enable the Executive to control every parish, and therefore, of course, to dispense with martial law. This was scarcely a fortnight after the declaration of martial law, and in less than another fortnight martial law terminated. The Governor, a day or two after the amnesty, wrote thus to the Secretary of State on the 22nd November:—

Governor EYRE to Mr. CARDWELL.

"As I reported in the despatch of the 20th ult., arrangements had been made before I quitted the disturbed districts for thoroughly examining and

scouring the entire country eastward of a line between Morant Bay and Port Antonio, within which, as I then stated, any rebels still at large were hemmed in. This service has been most ably performed by the military.

“Many rebels were taken and sent in for trial, and others were shot. Colonel Fyfe also succeeded, with a party of Maroons, in capturing the notorious rebel leader, Paul Bogle, who had hitherto eluded all attempts to take him. This movement so completely broke up any small parties of rebels who might, up to this time, still have kept together, that I judged it at once expedient (after expressing my views to the General, and obtaining his concurrence) to issue a proclamation of a general amnesty and pardon to all except those actually guilty of murder or arson, or in arms, or with stolen property in their possession. I enclose a copy of this proclamation.

“This step will, I have no doubt, lead to the immediate restoration of most of the plunder taken from the houses sacked by the rebels, and to the return of the peasantry to labour on the estates. The *districts lately in open rebellion* I therefore now consider perfectly quieted and safe, indeed far safer than any other part of the island. The retribution has been so prompt and so terrible that it is never likely to be forgotten.

The *accounts from the other parts of the island continue to cause me much anxiety*. No *actual outbreak* has taken place, and I hope none will ; but it is manifest that the seeds of sedition and rebellion have been sown broadcast through the land, and that in *every parish there are many prepared, if a fitting opportunity offered, to act just as the negroes did in the eastern parishes*. In many parts of the country a sympathy with the eastern rebels, and an expression of a desire or an intention to do the same in their own parishes, have been publicly and openly indulged in ; whilst the local authorities, from the absence of any organised force to resist a rising, have not been in a position to take up and punish such disloyal and seditious language or threats.

“Since the arrival of Her Majesty’s ship ‘Urgent’ with troops from Barbadoes, I have been enabled to direct such a disposition of troops as will, *if carried out by the military authorities*, enable the Executive to keep under check and control nearly every parish in the island, and if it is not practicable in all cases to prevent a rising, we shall be in a position to put it down without much difficulty, as well as to prevent its rapid extension to other parishes, as occurred in St. Thomas-in-the-East.

“There can be no doubt but that there has been an intercommunication between the negroes of the different parishes, and an intention to act in concert for the destruction of the white and coloured inhabitants, as is proved by the many remarks and speeches which have reached us from all directions, some of them intimating a knowledge that something was about to occur at St. Thomas-in-the-East, and that they were waiting in other parishes to be guided by the action taken there. There does not appear, however, to have been any actually organised combination to act simultaneously, or, if there was, it was frustrated by the rising taking place prematurely at Morant Bay.

"I believe that the military arrangements stated in my letters to General O'Connor, transmitted in my despatch No. 261 of even date, together with the presence of two men-of-war, one on the north and the other on the south coast, constantly visiting the different ports, will render the island secure and restore public confidence; but it will be necessary for a long time to come to keep up an additional number of troops in Jamaica, as well as to have a man-of-war frequently visiting all the outports."

It plainly appeared from communications to the Governor, contained in the despatches written at this time, that in the opinion of the military commanders, the other portions of the colony were even in a more dangerous state than the Governor supposed, and that they were pressing him not only to *continue*, but to *extend* martial law. For on the very next day the military officer who had been sent to inspect the more remote districts wrote thus to the Commander-in-chief:—

"From the little I have seen of this part of the island, and the great difficulty experienced in procuring means of transport, I am of opinion that Trelawney, St. James's, Hanover, and Westmoreland *should be immediately placed under martial law*, as serious difficulties may arise from the great indifference shown by the labouring classes to any orders issued by me in my present useless position, and the sluggish manner in which they are obeyed.

"I trust the Major-General will, at his *earliest* convenience, recommend his Excellency the Governor to *place the above parishes under martial law*, or my presence here, with my present small force, will be of little service to the colony."

On which the Commander-in-chief wrote thus:—

"I endorse the opinion, *having been convinced from the first breaking out of the rebellion the whole is and ought to have been placed under martial law.*" (Dated Nov. 3.)

This was only ten days before the termination of martial law, and thus the Governor was pressed by the military commanders not only to continue, but to *extend* martial law. He resisted their pressure, refused to extend martial law, and thus wrote in reply:—

"With regard to the immediate proclamation of martial law in the parishes of Trelawney, St. James's, Hanover, and Westmoreland, as requested

by Colonel Whitfield, I would remark that as no actual outbreak exists in any of them, I do not consider it will be politic or right to adopt the course suggested at present. Should any serious disturbance take place, I should be ready to recommend its adoption to a Council of War, which would have to be summoned to consider the question."

They in the result yielded to his better and wiser judgment, and retracted their recommendation, on which the Governor wrote, in terms fully explaining his policy, which was to restore peace by the distribution of the military, and then, so soon as it was restored, to terminate martial law :—

"Late last evening an express arrived from General O'Connor, forwarding me a further communication from Colonel Whitfield, copy of which is inclosed. The report states that all was quiet in the district, and that Colonel Whitfield withdraws his application that martial law might be proclaimed. General O'Connor endorses this view, and states, 'Martial law, from the present appearances, I consider unnecessary.' (That is, in that district.)

"These additional reports only confirm me in the justness of the views I entertained from the first, and in the soundness of the policy I have adopted in the arrangements directed for the preservation of public tranquillity.

"Undoubtedly there has been and is a widespread feeling of disaffection, and a tendency to sedition and rebellion, but there is no organised combined action, and consequently the location of a small body of troops at a great many different points has the immediate effect of keeping the country *contiguous to each of those points* free from any actual outbreak."

But that same despatch showed that it was only the *actual presence* of troops which kept down the rebellion in various districts, and that the troops were in course of distribution, then only nine or ten days before the expiration of martial law. The despatch went on :—

"You will notice, from the correspondence forwarded in a former despatch, that Brown's Town was considered to be threatened. The establishment of a military post there enabled Colonel Whitfield soon afterwards to report, in his letter of the 2nd November, that there was no longer any anticipation of a riot.

"My despatch of yesterday would show that *serious apprehensions were entertained of a disturbance inland*, to the south of Montego Bay.

"The marching of fifty-five men into the district at once put down any such intention if it existed. *The same occurred in Vere, and in other places at which detachments have been placed.*

"I fully hope that if these precautions be continued for some time longer a change of feeling will take place in the minds of the peasantry, and everything so far settle down into its usual course, that before very long the many small outposts of troops at present so necessary, may be withdrawn, and the men concentrated, retaining only two or three main positions as a precaution. These latter will have to be kept up for a considerable period of time to come."

So entirely was this view in accordance with that of the military, that is, that the *actual presence* of troops alone prevented the insurrection from breaking out, that the officer sent to inspect the island, wrote thus to the Governor *a week after* the cessation of martial law:—

"I quite agree in thinking that a *sedition and disloyal spirit pervades* the entire island, and that in *all probability the negroes would rise were it not for the presence of the military.* (Colonel Whitfield to Mr. Eyre, November 21, 1865.)

That was in answer to a letter from the Governor on the day martial law expired, pressing the policy on which alone he relied in allowing martial law to cease during the distribution of the military, which was hardly then completed:—

"I should like to consult with you as to the state of the country and the policy which I consider it right to adopt to preserve, as far as practicable, peace and good order, and prevent the occurrence of any further actual outbreak of rebellion.

"At the time that you arrived the insurrection *in the eastern parishes was thoroughly got under, but from information reaching the Government from every direction it was evident that a seditious and disloyal spirit pervaded the entire island, and that in several localities the negroes were prepared to rise and repeat the scenes which occurred in St. Thomas-in-the-East, if a fitting opportunity presented itself*; there were also good grounds for supposing that a considerable amount of intercommunication had taken place between the disaffected of the different parishes, and that had the rising not been brought about somewhat prematurely at Morant Bay, it would at a later period of the year have been more general and simultaneous."

“Under these circumstances the natural, and, indeed, the necessary action of the Government was to station small parties of troops as rapidly as practicable at as great a number of distinct positions as possible, having in view, of course, first, the requirements, and comparative urgency of the requirements, of the respective districts ; and secondly, the accommodation obtainable for troops, and the means of supporting them by reinforcements, or by men-of-war, should such support be required.

“I am quite aware that in a soldier's point of view, the dispersion of troops in small isolated detachments is not looked upon with a favourable eye, and that, in fact, it is exceedingly demoralising as regards organisation and discipline. But under the circumstances in which the colony is placed there is no help for it, and it is better that the troops should suffer in their military organisation and discipline for a time, if thereby they can prevent the outbreak of rebellion, than that by being concentrated and kept in good military order they should leave openings for the disaffection to gain ground and break into a rebellion, which once existing might require a much larger number of troops and a long period of time for its suppression.” (Governor Eyre to Col. Whitfield, Nov. 13.)

In this despatch it will be distinctly seen that in the view of the Governor martial law was the necessary counteracting force, so to speak, to a widespread spirit of rebellion, only kept down by the actual presence of troops, which could only be secured by means of a distribution of military force not possible until the reinforcements had arrived, and which then was obstructed by a difference with the Commander-in-chief, and which required to be carried out before the country would be safe :—

“It is from considerations of this kind that I have felt it my duty to call upon the General to make so many detached stations.

“That the policy is a sound one is shown by the result at each station where difficulties were anticipated ; the mere stationing of a small body of troops has allayed apprehension, and has so far had the effect of keeping the several districts quiet. It is, however, important to bear in mind that it *does not follow because the districts are quiet therefore the troops may be withdrawn ; it is the presence of the troops that causes this quietude. The tendency to sedition and rebellion is still latent, and requires to be carefully watched and kept in check for some time to come.* By degrees this feeling will no doubt pass away, the present excitement be forgotten, and everything pass to its usual ordinary course. It will then be practicable to withdraw the troops from many of the stations, and concentrate them at a few of the principal positions, but there will be time enough to discuss

these matters hereafter. For some weeks to come I think the whole of the points now occupied should be kept up. I do not know whether you have a station on the line between Savanna la Mar and Montego Bay, about Kew Park; but from the account we have of the dispositions of the negroes in the districts bordering on that line, it appears very desirable to have such a post established for a time. It has an immense moral effect to show that troops are available, and can at any moment be located even in the interior districts, nor does it in the least signify that the posts at the chief ports and towns are weakened, now that we have so large a naval force around the coast. I yesterday arranged with Admiral Sir J. Hope that five men-of-war should, for the present, be stationed at different outposts, besides his own large vessel, the 'Duncan,' to lie off Kingston, and others at Port Royal, ready for any service required. I am also sending a large body of loyal Maroons, armed, through the country, to fraternise with the Maroons at Accompong, in St. James's, and to show the negroes that if need were, we have a large force at once applicable, who could follow and hunt them out of the most secret and inaccessible recesses of the mountains. The object of all my arrangements is, if possible, to prevent the occurrence of any further outbreak, and gradually to bring back the negro mind to a state of quietude and good feeling. I should be glad to hear from you, and learn your impressions as to the state of matters or of feeling in the parishes you have visited." (Governor Eyre to Col. Whitfield, Nov. 13.)

The impression of the Governor, derived from the reports he received from all parts of the island, and confirmed by the military authorities, was that the negroes were everywhere ready for rebellion, and were only kept down either by the actual presence of armed force or by the terror of martial law, so that until the troops were everywhere distributed, martial law could not be dispensed with.

This impression was shared by the Legislature of the island, for a few days before martial law ended the Legislative Council presented to his Excellency the address which they had voted. In it they say:—

"While joining your Excellency in acknowledging the zealous and able services of his Excellency the General commanding, the senior naval officer, and of the military and naval forces, as well as of the volunteers, we desire also to record our grateful thanks to your Excellency for the energy, firmness, and wisdom with which you have carried the island through this momentous crisis. We are well aware that the slightest

hesitation on your part would have been fraught with the most imminent danger to the lives of the loyal inhabitants throughout the island, and we are well assured that all our loyal fellow-colonists unite in the expression of gratitude which it is now our privilege to convey to you.

"We entirely concur in the painful statement your Excellency has made, that there is scarcely a district throughout the island where disloyalty sedition, and murderous intentions are not widely disseminated and openly expressed. We agree with your Excellency as to the causes which have created the danger that now threatens the country, and will heartily co-operate with you in endeavouring to remedy this state of affairs."

And again, a few days later, only two or three days before the expiration of martial law, the Governor wrote :—

"I am very thankful to say that the rebellion in the *eastern parishes* is effectually subdued and punished, and although much *disaffection exists in most of the other parishes*, I consider that so far as it is possible to judge we have now a sufficient military force within the colony to protect it from any further serious outbreak, or to put it down should it take place ; consequently the troops arrived from Halifax are not now required, though I beg to be permitted in my own name and in that of the colony to thank most gratefully your Excellency and the authorities in Nova Scotia for the very prompt manner in which such a powerful force has been so generously dispatched to our assistance, and which, had the rebellion not been suddenly crushed in the district where it originated would certainly have been most urgently needed.

"I feel fully convinced that any delay or any reverse during the first few days would have led to the rebellion becoming universal throughout the whole island.

"We are still in a very precarious position as regards the disposition and possible conduct of the negroes, and though I think the troops brought from North America may be safely dispensed with, I consider that for some time to come the services of two men-of-war ought to be available for the purpose of frequently visiting every part in the island, and watching the course of events." (Governor Eyre to Admiral Hope, Nov. 10.)

At the same time, it appeared on the testimony of the Commander-in-chief, an experienced military officer, that within a week of the termination of martial law, its exercise had not been more than sufficient, and that military movements and measures were still necessary, for he wrote this letter to the Secretary of War on the 7th November, martial law ending on the 16th :—

"I have the honour to report for your information that, through the energetic and judicious measures of Brigadier-General Nelson, and the patient, steady perseverance of the officers and men under his command, the rebellion has been entirely crushed in the *eastern* part of Jamaica, and prevented, to a *certain extent*, spreading among *other* disaffected parishes and districts.

"His Excellency the Governor sees from time to time to apprehend danger from the inhabitants of Black River, Brown's Town, Mandeville, Vere, and has called for so many detachments as to render it a difficult task to meet the urgent demands of his Excellency from the very limited force at my command.

"The arrival of the troops named in the margin from Barbadoes and Nassau on the 25th ultimo, proved a seasonable reinforcement, and I have placed Colonel Whitfield, 2nd West India Regiment, an officer of long-trying experience in Jamaica, in command of the *western* district, with perfect confidence in his zeal and ability to carry out the measures I have adopted for the safety and welfare of this part of the island."

Thus, both the Commander-in-chief and the Governor considered—only a week before the expiration of martial law—that the rebellion had been only crushed in the eastern part of the island, and had only been to a certain extent prevented from spreading in the other disaffected districts, and that military measures were still necessary in the western district. This was only four days before the actual termination of martial law, which was on the 11th November, the 12th being a Sunday, and the statutory duration of martial law ending on the 13th, so that the 11th was its last day for actual operation, and at that time it was the opinion of the Commander-in-chief that the rebellion had but barely been subdued. And this entirely agreed with the language used by the Governor in his original despatches, in which he wrote:—

"In reporting the occurrences of the outbreak of the rebellion, and the steps taken to put it down, it is my duty to state most unequivocally my opinion that Jamaica has been, *and to a certain extent still is*, in the greatest jeopardy. Humanly speaking, I believe that the promptitude and vigour of action which has at once grappled with and punished the rebellion, has been the saving of Jamaica. The whole colony has been upon a mine, which required but a spark to ignite it. *Disaffection and disloyalty still exist in nearly all the parishes of the island*, and had there

been the least hesitation or delay in dealing with them in the parishes where *they became developed in rebellion*, I confidently believe that the insurrection would have been universal throughout the entire island, and that either the colony would have been lost to the mother country, or *an almost interminable war and an unknown expense have had to be incurred in suppressing it.*"

Under this impression the Governor allowed martial law to continue in the district where the outbreak had taken place, for the punishment of those guilty of having taken part in the rebellion, according to the exposition of his view of the objects of martial law contained in his original despatch, which stated them thus :—

"I may premise that there were three principal objects to be attained :—

"First. To save the lives of the ladies, children, and other isolated and unprotected persons in the districts where the rebellion existed.

"Secondly. To head the insurrectionary movement, and prevent the further spread of the rebellion in its progress along and around the east end of the island.

"Thirdly. *To punish the rebels and restore peace to the disturbed districts.*"

That is, to restore peace by means of terror inspired by punishment of the rebels ; that is, of course, those found upon trial to have been guilty of taking part in the rebellion. Accordingly, with the sanction of the Governor, martial law continued until the distribution of the troops was carried out, and he wrote thus to the Commander-in-chief :—

"I have the honour to inform your Excellency that martial law will cease on and from Monday, the 13th of November, by the operation of the law under which it was called into existence in the county of Surrey. It will be desirable that *all prisoners under military custody who are not disposed of by the evening of Saturday, the 11th of November, shall then be released.*"

It has already been stated that the trials took place entirely under military authority, which was proved conclusively about this time by a remarkable matter disclosed in the despatches. It appeared that the Governor had

sent to the declared district several persons whom he considered to have been concerned in inciting to the rebellion, and in order that they might, if it were thought proper, be tried by court-martial. But the military authorities finding no evidence to satisfy them that the parties were guilty, declined to try them. And the Commander-in-chief thus mentioned the matter in a despatch to the Secretary-at-War, marked by an animus against the Governor, no doubt arising out of the controversy as to the disposition of the military :—

“Brigadier-General Nelson, entertaining some doubt as to the legality of this proceeding, called *upon me for my opinion*, which endorsed his own, that, although he might have the authority and power to try the prisoners, he would not be justified to bring them before a military court-martial for political offences committed prior to the breaking out of the rebellion, attending or uttering treasonable language at seditious public meetings, their proceedings published and commented upon in newspapers, and whom the Government, either from weakness or mistaken lenity, did not at once arrest, thus operating as an indirect encouragement to the disaffected to persevere in their lawless designs.”

The military commanders, it will be seen, acted entirely upon their own opinion as to the trial of persons by court-martial, conceiving that martial law meant military authority, and that the district was entirely under their command, a view confirmed by a letter from the War Office, which was enclosed in one of the despatches, and thus stated the relative powers of the Commander-in-chief and the Governor as to the military :—

“The views entertained by Lord de Grey upon the subject of the respective functions and duties of the Governor of a Colony and the officer commanding Her Majesty’s troops, embodied in the letter from this Department of the 20th November last, have been so lately made known to Mr. Cardwell that it is unnecessary to do more in regard to the general question than to refer to that communication.

“It is there laid down that as the supreme authority in each colony is entrusted to the Governor, it is for him to determine the *general nature* of the operations to be undertaken by Her Majesty’s troops for the suppression of rebellion, and to order such steps as the safety and welfare of the colony may appear to him to require to be taken by the commander

of the forces ; while it is the duty of the officer in command of the troops to obey such orders as he may receive from the Governor, and to *adopt such military measures as may be best calculated to give effect to them.*"

That is to say, that it would be for the Governor, with the advice of the Commander-in-chief, to declare martial law, or determine as to its continuance, but for the military commander to direct its execution, and they did direct it, without any reference to the Governor, and the trials went on entirely under military authority. All that the Governor did, as defined in the despatch, being to give directions that whatever evidence there was against the prisoners should be sent, and that the cases should be carefully looked into to see what the evidence was. Whether or not there was evidence sufficient to put them upon their trial the military commander determined, as will appear from the following letter of the Commander-in-chief to the Governor a few days before the amnesty.

"I have the honour to bring to the notice of your Excellency that there are now at Up Park Camp seventy-five civil prisoners, sent there for safe custody by the surrounding magistrates and the authorities of Kingston.

"Against many of these prisoners there appear to be no charges or evidence, nor even documents connected with them in any way.

"Where evidence exists courts-martial at once deal with the offenders ; but with regard to the others, I would desire your views as to their disposal, their maintenance alone being a great expense to the colony."

It did not appear that the Governor had anything to do with their arrest, and the contrary rather appeared, both from the letter and the answer that he knew nothing about them. The Governor replied :—

"I have the honour to request your Excellency will be good enough to cause me to be furnished with a list of the names of the parties so detained, and a statement in such case of the name of the civil authority from whom or by whose direction they were conveyed to safe custody at Up Park Camp, in order that I may *direct inquiries to be made in reference to the prisoners, and the grounds of their detention.*"

It would appear, therefore, that the Governor knew nothing of the causes of arrest, and that they had been

arrested without his authority. It was after the few exceptional cases already mentioned, and preceding that of Gordon, that he had directed the arrest of any parties and their conveyance into the declared district, and of these cases, the military authorities, on their own judgment, ordered the trial of Gordon, and declined to allow the trial of the others.

And, again, on receipt of the list of prisoners remaining, the Governor wrote to the Commander-in-chief:—

“ I have the honour to acknowledge the receipt of your letter of 28th instant, enclosing a list of prisoners confined at Up Park Camp from the 14th to the 28th instant, and beg to state in reply that *I will direct inquiries to be made as to what evidence is likely to be forthcoming* with regard to those prisoners who are not yet disposed of.”

That is all: he will direct that the evidence, whatever it may be, shall be ascertained; and even with reference to the few individuals he had directed to be arrested, as those between whom the remarkable letter already alluded to had passed, he wrote:—

“ I have the honour to acquaint your Excellency that the civil authorities have reported to me that all the evidence likely to be available is now collected against the individuals named in the accompanying list and attached to it.

“ There is now no reason why the courts-martial should not at once inquire into and dispose of these cases.”

That is to say, if the military commander thinks proper, the Governor sends all the evidence the civil authorities can collect, leaving it entirely to the military authorities to judge of it. And so a day or two later, the Governor wrote to the Commander-in-chief:—

“ I have the honour to inform your Excellency that the evidence against the prisoners at Up Park Camp, named in the margin, being now complete as far as it can be arranged here, but other evidence being said to be available at Morant Bay, I shall be obliged by your directing that they be sent to-morrow morning to Port Royal to be embarked on board a man-of-war for Morant Bay.

“ It was intended that most of these prisoners should have been tried at Up Park Camp, but the gentlemen getting up the evidence have re-

ported to me late this evening that as some of the prisoners must go to Morant Bay, for further evidence [?] against the different prisoners is so mixed up together, it will be most convenient, and save considerable delay and confusion, to have the whole eleven sent to Morant Bay.

“The civil authorities at Kingston will put up the evidence all arranged, and accompanied by some memorandum addressed to Brigadier-General Nelson, and have it delivered in charge of the captain of the man-of-war, together with the prisoners.”

That is, the Governor was, of course, *assenting* to the trials going on; but he took no part in the direction of the trials, either as to the cases to be tried, or the tribunals to try them, still less as to the effect of the evidence, or the result of the proceedings; and it did not appear that (except in Gordon's case) he ever saw the proceedings in a single case, while, on the other hand, it is abundantly manifest that the Commander-in-chief would have resented or repelled any attempt on the part of the Governor to interfere with a matter which the military commanders deemed one entirely of military cognizance. This is manifest from the correspondence already referred to (enclosed in one of the despatches), relative to their *refusal to try certain prisoners*.

That correspondence was as follows:—The military commander having considered the evidence, did not think it showed complicity in the rebellion, and so wrote *not* to the Governor, but to the *Commander-in-chief*, declaring his opinion and seeking his sanction:—

“I have the honour to request the favour of your informing his Excellency the Governor, that having deemed it my duty to refer a case of one of the prisoners sent up for trial, namely, William Kelly Smith, in order that I might be informed on certain points connected therewith, so that the decision on such case might be my guide as to the disposal of the cases of the prisoners from Her Majesty's ship ‘Aboukir,’ Dr. Bruce and Mr. Levien, and having just had the honour to receive your opinion on the several points submitted, I have arrived at the decision that on my own responsibility I do not consider myself justified in arraigning these prisoners before a court-martial. My reason for thus doing so is, these prisoners all uttered the sentiments which are said to be seditious prior to the rebellion, and though I may have the power and authority under martial law (a power to myself very doubtful), yet it is a power I do not

feel myself justified in exercising, and which I shall not exert unless I receive positive orders so to do.

"The prisoners shall be kept under surveillance till *your instructions* respecting their disposal be received."

Upon which the Commander-in-chief, without consulting the Governor, wrote thus :—

"I entirely coincide in the opinion of Brigadier-General Nelson. We may have the authority and power, but would not be justified to try the prisoners by a military court-martial."

And then this, the *decision* of the military commander, was sent to the Governor, who, of course, could only acquiesce, and wrote in answer, that he presumed the military commander was satisfied that the evidence did not show complicity in the rebellion, and added :—

"I have to request your Excellency will be pleased to direct the prisoners referred to to be detained at Morant Bay until further orders, and that all the papers connected with their respective cases may at once be sent down to me for submission to the Attorney-General, in order that he may report if there are sufficient grounds to *take civil proceedings upon*."

And a few days afterwards he wrote, desiring their detention upon charges of offences against the ordinary law, as, of course, he would have a right to do :—

"As martial law is about expiring within a few days, I should be much obliged if your Excellency would cause me to be furnished, with as little delay as possible, with a list of the prisoners at Up Park Camp and at Morant Bay, still detained in custody, but not yet dealt with.

"The papers which I requested your Excellency would be good enough to cause to be returned to me from Morant Bay, relative to the prisoners whom Brigadier-General Nelson declined to try by court-martial, have not yet reached me. I should be much obliged by your requesting that they may, if possible, be transmitted to me during the present week, as Sunday next is the last day of martial law. The prisoners taken up by the civil power, and sent either to Up Park Camp or Morant Bay, I must beg you to order to be kept in custody, under any circumstances, until the Government is in a position to deal with those cases. I take upon myself the entire responsibility of the detention of these persons, although martial law will have expired. I will duly transmit a list of such of the prisoners as the Government considers may be released on the expiry of martial law."

Whether martial law was terminated or not, of course the prisoners would be amenable to ordinary law.

On the 11th November, less than a month from the time when martial law was declared, martial law virtually ceased; and since the amnesty a fortnight earlier, the more hasty and perilous part of martial law, military execution without trial, had entirely ceased. Indeed, as already indicated, that took place only during the first few days of martial law, under the influence of the first feelings of alarm, excitement, and horror caused by the massacre. After that time death was only inflicted upon trial by court-martial, entirely under military control and military authority.

From the above documents, it will abundantly appear that while the Governor with the advice of the Commander-in-chief allowed the continued execution of martial law, the military commanders directed its execution. It is further manifest that the Governor in allowing the continuance of martial law upon the evidence of the military commander, did so with reference to the condition of the entire island, and not merely the district which had been the scene of actual insurrection; and that he acted upon the belief that there was a widespread *rebellion*, the outbreak of which could only be prevented either by the terror of martial law, or by the distribution of military force; and that so soon as the military reinforcement arrived, *and were distributed*, he terminated the operation of martial law, the whole island continuing still in a most critical state, and requiring the presence of the military in every part of it to preserve the peace and give confidence to the peaceably disposed.

It will have abundantly appeared to those who have made themselves acquainted with the authorities upon the subject, that it must have been manifest to any competent and impartial lawyer, that all that had taken place, so far as it had been authorized by the Governor; or, so far as appeared, by the military commanders, was legal; or, at all events, could not possibly involve any criminal

responsibility. As to the Governor, he had only declared martial law under a local Act of Parliament, with the concurrence of his counsel, and the advice of his Attorney-General, his Chief Justice, and his Commander-in-chief, and he had after that neither done nor directed anything beyond some general directions as to movements of troops, and some general suggestions to "cut off and capture the rebels," except in ordering the arrest of a few persons, only one of whom was tried. It did not appear that, with that exception, he gave any *particular* orders or directions, that he ordered a single execution, or even directed a single trial, nor a single act of punishment, nor, except in Gordon's case, ever saw the proceedings of a single trial. And it further appeared, that he could not possibly have had anything to do with the acts of the military at distant places, of which he could only know *afterwards* by means of reports, which reports were *sent not* to him, but to the Commander-in-chief, and only came to him for the purpose of being enclosed in despatches to the Secretary of State; and that even supposing—who, on *careful* perusal, there might seem some ground to suspect—that there had been some excesses; it not only did not appear that he was or could be legally responsible for them, but it plainly appeared that he could not *possibly* be.

And then as to the military commander to whom the officers reported, and whose duty it would be if they saw any impropriety to censure or disapprove, they did not appear to have observed anything calling for reprehension. Nay, more. The reports went to the Secretary-at-War, and he did not appear to have observed anything calling for reprehension, at all events not in the reports of the regular officers. It was upon a careful perusal of the reports, that in one or two instances expressions were observed which appeared to denote a want of due sobriety of judgment, and the presence of some excitement of feeling which might easily be accounted for by the circum-

stances of the colony. And even if there had been any isolated instances of excess, it did not appear that they had been in accordance with any order issued by the military commander, and they would be the acts at the utmost of the officers on the spot; and it did not even appear that they were in all cases under orders of the officers, so that they would be the acts only of the actual perpetrators, as indeed was apparent in some cases.

Upon the whole, therefore, to the mind of any competent and impartial lawyer, there would not and did not appear any reason to doubt the substantial legality of the measures taken, that is, so far as they had been under any orders or directions from superior authority; and though a careful and critical perusal of the report might suggest a suspicion for some excesses and ground for some inquiry, there would appear no ground whatever for imputing any criminal liability nor even illegality to the Governor or military commander.

Accordingly these despatches and enclosures, when received by the Secretary of State, did not appear to make upon his mind the impression of any illegality or culpability on the part of the Governor or military commander; on the contrary, although he intimated a desire for some explanation from the *officers*, whose reports were enclosed, the Secretary of State spoke of the conduct of the *Governor* and commander in terms of commendation, and had the candour to acknowledge what the dates seemingly abundantly made manifest, that it was obvious the Governor had not had time to make himself master of the contents; and it was evident it never entered into his mind that the Governor could be deemed responsible for the acts disclosed. When the first and principal despatch arrived containing the substance of what had taken place, and fully disclosing the declaration and execution of martial law, he wrote this in answer:—

“By the mail from the West Indies, the arrival of which did not take place till yesterday, I have received your despatch of the 20th October

last, reporting the breaking out of a rebellion of the negroes in the eastern districts of Jamaica, which has involved the cruel massacre of many of the principal white and coloured persons in that part of the island, and acquainting me with the measures which, in concert with the officers in command of Her Majesty's military and naval forces, you have taken to suppress the insurrection, and to prevent it spreading to other parts of the island.

"I have been greatly shocked at the barbarities which you describe, and I wish you, in the first place, to inform the inhabitants of Jamaica how deeply Her Majesty's Government deplore the losses which the colony in general has sustained, and how sincerely they sympathise with those who have to lament family bereavements incurred under circumstances so distressing. I have next to convey to you my *high approval of the spirit, energy, and judgment* with which you have acted in your measures for repressing and preventing the spread of the insurrection. It was the first duty of your Government to take, as you did, effectual measures for the suppression of this horrible rebellion, and I congratulate you on the rapid success by which those measures appear to have been attended. *Time has not sufficed for any adequate examination of the reports which you have been able to send me by this mail;* and no doubt you will have much further intelligence to communicate to me hereafter on the subject of the measures of severity to which you have felt it to be necessary to have recourse. If you had time in forwarding those enclosures to make yourself acquainted with all their contents, it will have been evident to you that they contain many passages which will require to be explained as soon as there shall be sufficient leisure *for the writers to explain fully* the proceedings to which they relate. In the meantime I rely on your high character, and on the character of the officers by whose efficient aid you have repressed rebellion and restored safety, and receive with much satisfaction your assurance that these measures will prove to have been a merciful substitute for the much larger measure of punishment which would have had to be executed had the rebellion been allowed time to gather head and extend itself. I entirely agree with you that *measures of severity, when dictated by necessity and justice, are in reality measures of mercy*, and do not doubt it will appear that you have arrested the course of punishment as soon as you were able to do so, and have exerted yourself to confine it meanwhile to ascertained offenders and to cases of aggravated guilt. I observe with pleasure the hope you express, that if no further outbreak occurs, you will, in a short time, have been able to proclaim a general amnesty, except to actual murderers."

It is important to observe that though the case of Gordon was fully disclosed, it did not appear to have suggested to the Secretary of State any idea of illegality, and it was not mentioned in the first despatches.

In the next despatch, written a week afterwards, when explanation was asked as to some passages in the reports of the officer enclosed in the despatch, the Secretary of State evidently treated the matters they disclosed as the acts of *the officers*, and addressed himself to the Governor not as in any degree responsible for them, but only as the proper authority to demand explanation of them from the officers, the writers of the reports. And the same tone of candid consideration was extended even to them:—

“I avail myself of the sailing of the ‘Constance’ frigate to address you on the subject of those enclosures in your despatch of the 20th of October to which I referred in my last despatch as requiring explanation, but which there was not time adequately to examine during the brief interval of the mail.

“I rely on the assurances conveyed to me in your despatch, and do not doubt that no time will have been lost in checking at the earliest possible moment those measures of instant severity which only an overwhelming sense of public danger justifies, and in returning to the ordinary course of legal inquiry, and of the judicial trial and punishment of offenders. It remains, therefore, now to examine the statements contained in those enclosures; and in doing so *I shall bear in mind the pressure under which they were written*, and the great probability that much remains to be said in those cases which, so far as they are yet before me, require explanation; cases in which, without such explanation, the severity inflicted would not appear to have been justifiable. *In calmly reviewing, when the danger is believed to be over, all the occurrences of an outbreak in which the spread of the insurrection over the whole island was apprehended, with the massacre of all the principal inhabitants, great allowance must be made for acts which have resulted from that apprehension.* Her Majesty’s Government will not fail to bear this consideration in mind in the judgment which they will ultimately form upon all the circumstances of the present case. I have to request that you will furnish me with copies of the proceedings of the courts-martial, and of the evidence taken in the several cases. These documents are referred to in your despatch and the enclosures, but it was no doubt impossible that you should have been prepared to forward them by the last mail.

“On the case of Mr. Gordon I have addressed you in a separate despatch.”

The despatch enclosed several passages from reports of the officers which appeared to require explanation, and

indicated that they had, during the last few days, amidst the horror and excitement caused by the massacre and the natural feelings of indignation it had excited, acted, somewhat rashly, on a supposed application of the principle of the common law, that persons flying from apprehension are liable to be killed ; and had in some instances allowed them even to shoot negroes without sufficient care to see that they were rebels, or had been concerned in the insurrection.

In a separate despatch, in which the Secretary of State treated of Gordon's case, he did not notice the Governor's distinct statement, that the execution was necessary in order to put down the rebellion, and had evidently been misled upon two points of law :—

“ I wish to know whether your *approval* of Gordon's execution rested on evidence of his participation in the insurrection itself, or the actual resistance of authority out of which it arose, or, as your letter to Major-General O'Connor might give occasion to suppose, on evidence of the lesser offence of using seditious and inflammatory language, *calculated* indeed to produce resistance to authority and rebellion, *but without proof of any deliberate design* of producing that result.

“ It is matter of obvious remark that Gordon was arrested at Kingston, to which martial law did not extend, and taken to Morant Bay for trial, under martial law. Her Majesty's Government await with much anxiety your explanation on this subject.

“ I desire also to see it clearly established that he was not executed until crimes had been proved in evidence against him which deserved death ; and that the prompt infliction of capital punishment was necessary to rescue the colony from imminent danger, and from the horrors of a general or widespread insurrection, and the repetition elsewhere of such a slaughter of the white and coloured colonists as had taken place in the eastern part of the island.”

The Secretary of State here indicated the presence of those mistakes in point of law from which the whole clamour as to Gordon's case proceeded. He was evidently under the impression that express or actual evidence of an intention to incite to insurrection would be necessary, even in a case where the language shown to have been

used was *calculated* to have that effect, whereas the use of such language itself is abundant evidence of such an intention, seeing that men must be taken to intend the natural consequence of their acts and words, and a man cannot be allowed to pretend that he alone is ignorant of the effect his language is calculated to produce. In the next place the Secretary of State evidently was under the impression that a person who had incited to, or taken part in, a rebellion, was not liable to martial law if he took care to keep out of the district where it prevailed, whereas, martial law, like any other law, applies to *all offences committed or caused within the field of its operation*, the locality of trial depending in all cases on the locality of the *crime*, not that of the *person*; and the exercise of martial law consisting not in mere arrest, which might take place at common law, but in the *summary trial and execution*, which no doubt could only take place in the district under martial law. The language of the Secretary of State evidently implied an impression that when a man is arrested out of the district, to be taken into it, martial law was exercised out of the district. But that was a complete mistake. Any one can be arrested for sedition or treason, at common law, and *being* arrested, the proper course is to take him to the district where he is liable to be tried, which is the district where he did or caused the evil of which he is accused. And if that district is under martial law, he can be tried by martial law; and when he is so tried, and not until then, martial law is exercised. So that it was a fallacy to suppose that martial law had been exercised out of the district. And even if it had been, as the whole island could have been declared—and it would have been only another stroke of the pen,—the point was purely technical, even if there was anything in it, provided that the man was really guilty, and his death was really necessary, or at all events appeared to be so at the time. And hence the Secretary of State in each case

put that as the substantial point. And it is to be borne in mind that at the time that evidence in Gordon's case had not arrived, and the Secretary of State had evidently overlooked the passage in the Governor's letter in which he distinctly stated that the execution was necessary, and that it would be in vain to hope to put down the insurrection if the author was allowed to enjoy impunity. The misconception which prevailed upon these points caused the subsequent agitation upon the case.

In another despatch the Secretary of State addressed to the Governor a number of specific and searching inquiries as to the execution of martial law, the answer to which would have furnished all the information necessary to arrive at a judgment upon the subject. It will be seen that the very nature and terms of these inquiries on the other hand, directed as they were to the manner in which martial law had been executed, and the rules by which it had been regulated, rather implied the legality of its execution, and were pointed to the question of its propriety or the exercise of due and proper *control* over it. The despatch was in these terms:—

“In reference not only to the particular reports adverted to in this and in my former despatch, but to the proceedings generally, I am desirous to point to the main topics which, in the opinion of Her Majesty's Government, demand your report:—

“1. The number of persons tried, and of those sentenced by courts-martial, specifying the charge and sentence, and whether or not the sentence was executed, and under whose authority, and whether minutes were taken of the evidence on which the sentence was founded in each case; all minutes of evidence so taken to be appended to the return. The return should show also at what places and times respectively the offences were charged to have been committed, and the accused persons were arrested, or captured, and tried, specifying in each case whether the offence was committed before or during martial law, whether the arrest or capture was made during martial law, and in a place to which martial law extended; and if the person accused was arrested or captured in a place to which martial law did not extend, and removed to a place to which it did extend, there to be tried by martial law, and for an offence not committed during and under martial law, it should be stated by whose

authority this was done, and whether under the advice of the Attorney-General of Jamaica.

“2. Whether any persons were hanged, flogged, or otherwise punished without trial, and if so, by whom and under whose authority in each case, specifying the name, sex, colour, and quality of the person punished, the nature and date of the punishment, the nature and date of the offence, and the grounds on which it was assumed to have been committed.

“3. The number of persons, so far as can be ascertained, who were shot in the field or in the bush, their names, sex, quality, and colour, and whether adults or children, specifying in all cases whether they were resisting or flying, whether armed or unarmed, and if armed, with what weapons, whether such as are used only for purposes of offence, or such as are used also in agricultural or other peaceful occupations.

“4. Whether any and what oral or written instructions were given to officers in command of detachments sent in pursuit of rebels, whereby they might know on what evidence or appearances, other than hostile action or attitude, they were to assume that those they might meet with were rebels; and whether those officers, or any of them, were led by their instructions, or otherwise, and without authority induced to assume that all persons flying or hiding from pursuit, or all persons found with plunder, or all persons leaving their labour on plantations, were to be regarded as rebels and shot when met with. Copies of all written instructions should be furnished.”

The Governor, in answer to these demands for explanation, wrote to the effect, that while the general arrangements for the suppression of the rebellion were made under his direction, all the internal management of the district under martial law was under military direction, and, in short, that he had only authorised martial law, and that its actual execution was entirely under the military commanders; that when he wrote his despatches he had only a *general* knowledge of the matter, and that he had hitherto had no time to make particular inquiries.

“With regard to the various letters which accompanied my despatch and to certain passages in them which you say call for further explanation and justification, I have to remark that whilst all the general arrangements for the suppression and punishment of the rebellion were made under my own immediate direction, the subordinate details and the *internal management of the districts under martial law, including the*

appointment of courts-martial, the trial of prisoners, the approval of sentences, and the carrying out of such sentences, vested entirely with the military authorities, were reported to the General in command, and only partially came under my notice in a general manner through the letters to which you refer. Many of these letters I only obtained a hurried glance at when overwhelmed with the labour and anxiety of the most pressing events; and although copies were eventually furnished to me, most of these only reached me just in time to be appended to my despatch without my being enabled to have other copies made for my own use.

“After despatching the October mails, the thought, work, and anxiety entailed in arranging for the safety and protection of the western district of the colony absorbed my attention from a very early hour in the morning to a very late one at night, and even during the few brief hours that I attempted to obtain rest there was rarely a night during which I was not called up at all hours, one, two, or three times, by expresses from one place or another, requiring me to get up at once and reply to or give directions connected with such communications. Added to this was the ordinary work of the colony, the correspondence with the subordinate Governments, and the preparation for the current work of a most important legislative session.

“I mention these particulars only to show the pressure that was upon me (a pressure which has seriously affected my health), and how impossible it was for me to scrutinise or investigate carefully the details of the enormous mass of papers which were continually coming before me. As regards those connected with the rebellion, my desire was to place you in possession of the fullest and most complete information with the least possible delay, and in order to effect this I was often obliged to transmit documents which had been but hastily glanced at without analysing or reporting upon them, and without retaining copies. I will now endeavour to procure such copies and read through the correspondence with the view of calling for fuller information upon such points as seem to require explanation or justification; but I should also be obliged by your causing me to be informed of the particulars in regard to which you desire further reports, so that nothing may be omitted which it is in my power to do to place all the circumstances in a clear manner before you.

“It is very probable that some occurrences may have taken place which cannot be justified during the prevalence of martial law, and where so much was necessarily left to the discretion of, or where an unforeseen responsibility was by circumstances forced upon, subordinate authorities, differing greatly in character, ability, temper, experience, and judgment. Such cases can only be sincerely deplored. It would have been impossible, under the excitement and urgency of the circumstances attending the outbreak, to have either guarded against or prevented their taking place. It must be remembered, too, that the threatening accounts received from the other districts of the colony, and the limited means of meeting any

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difficulties which might arise there, *made it a matter of simple self-defence* that the outbreak in the east should both be put down with the least possible delay *and be punished in the most summary manner*. The safety, in fact the preservation, of the colony made this imperative.

“As regards the general features of and mode of carrying out the retribution which was so necessarily and justly dealt to those who were principals in this most cruel and unprovoked insurrection, I do not doubt but that ample justification will be forthcoming by the officers under whose immediate directions and supervision it took place. Those officers were Major-General O'Connor in Kingston, Brigadier-General Nelson in the districts east of Morant Bay, and Colonel Hobbs in the district north-west of Morant Bay. The high rank and character of all these officers is, I think, a full guarantee that nothing improper or unjust took place with their knowledge or sanction; and I do not doubt but that they will be ready and able to afford full explanation and justification upon any points which, without such further information, may at present seem unsatisfactory.

“If I recollect aright there was in one of Colonel Hobbs' own letters a statement to the effect that having some prisoners whom he could not take with him, he had found it necessary to shoot them. I presume this implies after trial by court-martial, and either upon their being taken in arms against the Queen, *or upon direct testimony of their complicity in the rebellion*. It must be remembered that the military officers in the field wrote under great disadvantages, and when worn out in body and mind by the fatigues and anxieties of the day. Under such conditions their reports could scarcely be expected to contain all the details which it is desirable to know.”

In this despatch it will be seen the Governor, in exact accordance, it is considered, with the authorities on the subject, avowed his having sanctioned martial law as a measure of social self-defence, on the ground of the necessity for speedy measures of a deterrent character, and the summary infliction of punishment upon the rebels by military executions; and that the military authorities considered that not only those were liable to military execution under martial law who were actually taken in arms, but who were clearly proved to have been in arms, or to have taken part in the rebellion. In another despatch he thus vindicated this view, upon the ground of necessity for the general safety of the community:—

“A very serious rebellion had broken out, and was rapidly spreading in the eastern part of the island, a considerable portion of the troops in the

colony had been called into the field, and the entire force in Jamaica would barely be able to cope with the then existing rebellion, and protect the principal towns of Kingston and Spanish Town.

"If the rebellion broke out simultaneously in any other quarter, as there was every reason to fear might be the case, there would have been little hope of coping with it effectually, and it was clear that under any circumstances whatever a large augmentation of troops would be necessary in Jamaica for some time to come.

"Long previous to the rebellion breaking out in Morant Bay, Government had good reason to believe that a spirit of disaffection and disloyalty pervaded very many of the parishes; and as far back as August last I had occasion to bring to your notice that I had been obliged to send down a ship of war to certain parts to watch events and be prepared for any emergency.

"The actual rising of the negro population took place at a different point of the island, and it rapidly extended from that point along the coast line of the eastern end of the island for some fifty miles, until headed and turned by the landing of troops at Port Antonio.

"It was also at the same time spreading to the north-west, up the line of the Blue Mountain valley, until checked by meeting the troops detached from Newcastle to intercept its progress.

"It is scarcely necessary to point out that the negro is a creature of impulse and imitation, easily misled, very excitable, and a perfect fiend when under the influence of an excitement which stirs up all the evil passions of a race little removed in many respects from absolute savages.

"Under these conditions, and knowing the insecure and unprotected state of the entire colony, and the small force available for our defence in the event of any general rising taking place simultaneously, it became a matter of absolute necessity and self-defence, not only promptly to put down the outbreak, but by proclaiming martial law in the districts where it existed and contiguous thereto, to ensure that the punishment inflicted should be summary and severe.

"It was necessary to make an example which, by striking terror, might deter other districts from following the horrible example of St. Thomas-in-the-East.

"In the long run, and viewed as a whole, any amount of just severity thus exercised became a mercy, and the exaction of the last penalty for rebellion from the few has in all human probability saved the lives of the many, as well as relieved the colony and Great Britain from a long, protracted, bloody, and expensive strife; for it must be remembered that in an extensive, thinly populated, and mountainous country like Jamaica, without roads or means of traversing the mountain fastnesses, the subduing of a general rebellion would be no easy or short task.

"All the general arrangements, as narrated in my despatch No. 251, of

the 20th of October, were directed by myself personally, and for them I alone am responsible.

"The subordinate arrangements and details with regard to the internal management of the districts under martial law, were, of course, in the hands of military authorities, whose reports, so far as they have reached me, I have duly transmitted to you.

"It is, perhaps, impossible when a country is under martial law, imposed on account of scenes of violence, plundering of properties, burnings of houses, and cruel butcheries, and when there is little time for that cool and careful investigation which takes place under more favourable circumstances, but that some occurrences must ensue which are to be deplored, and under which individuals may possibly suffer unjustly.

"But taken as a whole, and bearing in mind both the vastness of the danger and the small means of meeting it, I do not consider that the punishment has been greater than the crime merited, or than was necessary to prevent a recurrence of it.

"I have a perfect conviction in my own mind, after an experience of four years in Jamaica, and with the best and most varied means of obtaining information, that this colony has had a most narrow escape from universal anarchy and tumult, and that this escape is due solely to the promptness and decision of action by which the first outbreak of rebellion was put down and punished."

And in particular regard to the execution of military law by court-martial, the Governor acted entirely on the ground of necessity, as a deterrent measure, in order to secure a speedy and exemplary administration of justice.

"On reviewing the acts of the military and naval authorities in dealing with any rebels who were found in arms or in summarily disposing (after trial by court-martial) of those who were taken prisoners, it is necessary to bear in mind that there were no prisons or gaols to which to send prisoners, and that some 500 men were engaged in quelling a rebellion in districts (St. David, St. Thomas-in-the-East, and Portland) tenanted by a population of some 40,000, and comprising upwards of 500 square miles of country. Nor must it be forgotten that *nearly the whole of this population, if not in actual rebellion, was sympathising with the rebels*, and taking no steps to arrest its progress or aid the authorities. It was impossible, under such circumstances, that they could either take charge of and guard any large number of prisoners, or make long delays to institute more formal trials. The administration of summary justice became a necessity, and any hesitation would have been fatal to the success of the military operations."

In the meantime, however, before the answers of the Governor were received, the Secretary of State had received some monstrous and exaggerated statements, which had reached him, through the Admiralty, from the Commodore on the station—statements which proved the chief material for popular agitation which was excited, and no doubt, coupled with the passages in the reports of one or two of the officers, were the main grounds on which a commission for inquiry into the execution of martial law, without waiting for the explanations of the officers, was soon afterwards resolved upon. And it is of importance to see that the inquiry was resolved upon under the influence of erroneous ideas as to the law, and false, monstrous, and exaggerated notions as to the facts. The Secretary of State wrote:—

“I enclose a copy of a letter from the Admiralty, with a copy of a despatch from Commodore Sir Leopold M’Clintock, dated the 8th November. This officer states that it will be impossible to ascertain the total loss of life in the insurrection, but that 1,500 would perhaps be a moderate computation; that, at the date of his letter, arrests were being daily made, and the prisoners sent to Morant Bay, and a large proportion of them hanged.”

This, however, was only a mild version of what the Commodore wrote, whose despatch, in which he stated that he only arrived on the 31st October, so that he could know nothing of the matter except from mere hearsay, and *his own officers* who had been actually engaged in the repression of the rebellion, and whose reports were enclosed, gave no colour of support to these monstrous statements. The Commodore wrote:—

“The insurrection has been completely quelled. *I am informed that no white people were assaulted subsequent to the first fearful outrage on the 11th ultimo; and the following day, at Golden Grove, about 300 persons had been hanged, ‘and at least 800 were shot,’ chiefly by the Maroons, who entered with fierce zeal into the bush-hunt after rebel negroes. Arrests were daily being made. The prisoners are generally sent to Morant Bay for trial, and a large proportion of them are hanged. It will be impossible*

ever to ascertain the total loss of life, but 1,500 would be a *moderate computation*." (Sir L. M'Clintock's Despatch, November 8.)

Now, this was written only three days before the actual cessation of martial law, and therefore at a time when the total number of executions was pretty well known to the military commanders, and might have been known to the naval commanders, as some of the naval officers were actually engaged in the courts-martial, and the reports of the latter, as already mentioned, gave no colour to the monstrous statements which formed the material for the subsequent operation.

And it was not only the Commôdore who was thus writing against the Governor; the Commander-in-chief, under whose orders and authority martial law was exercised, and whose controversy with the Governor as to the disposal of the military was pending, wrote at the same time to the Secretary-at-War in these terms :—

"The gaols were crowded with political prisoners and rebels handed over by the civil authorities captured in districts not under martial law, but whom the Governor desired might be tried by court-martial." (General O'Connor to the Secretary-at-War, Nov. 7.)

It will have been seen that the Governor, in truth, had *not* desired that any prisoners should be tried by court-martial, unless there was sufficient evidence in the opinion of the military commanders of complicity in the *rebellion*, and that in a correspondence between him and the Commander-in-chief it had distinctly appeared that this was so, and that the military commanders, and they alone, determined who should be tried, and that the Governor merely directed the evidence to be sent to him. First impressions, however, are hard to be eradicated, and the impression caused by these letters of the naval and military commanders, written behind his back to the authorities at home, must of course have been most prejudicial to the unfortunate Governor, who at that very time was engaged in a controversy with the military commander as to the

distribution of military force, with a view to the termination of martial law.

It further appeared from the despatches of the Secretary of State that the reports of the officers went not to the Governor, but to the Commander-in-chief of the colony, and from him to the Secretary of War; and that it was only in some instances that the Governor ever received copies to enclose in his despatches to the Secretary for the Colonies, for the latter had actually to send to the Governor extracts of reports *obtained from the Secretary of War*, with a view to the necessary explanations, and the Secretary of State wrote thus:—

“I enclose extracts from a report made by Lieutenant Adcock and *transmitted to Lord de Grey* in a despatch of General O'Connor.”

So that it appeared on the face of the despatches of the Secretary of State that the Governor *had not had, and could not have had knowledge of the matters on which explanation was required*, until the very time when the explanations were required.

These reports, however, contained one or two passages which showed that during the first excitement one or two of the officers had not preserved a cool head, and which were easily used for the purpose of exciting a prejudice against the whole execution of martial law. Concurrently with these matters of prejudice, and these misrepresentations of fact, there were serious misconceptions as to the law. A view of the law was loudly and widely proclaimed upon which martial law would be illegal, and the Governor and the officers would be guilty of murder. Premises were laid down whence that conclusion would necessarily follow. It was argued, in effect, that martial law was illegal in any other sense than resistance to actual insurrection, or that, at all events, it was only limited to such measures as a *jury* might consider necessary; that any act a jury might hold to be unnecessary was illegal, and that, being

illegal, it was, if an act of homicide, necessarily murder. In support of this view an opinion was procured from two eminent counsel, and which was made use of and afterwards published, to this effect:—

“Martial law is the assumption of the officers of the absolute power exercised by military force for the suppression of *insurrection* and the *restoration of order and lawful authority*. The officers of the Crown are justified in the exercise of force, and the destruction of life and property to any extent that may be required for the purpose. But they are not justified in inflicting punishment after resistance is suppressed, and after the courts can be re-opened. And courts-martial, by which martial law, in this sense of the word, is administered, are not, properly speaking, courts-martial, or courts at all, but are mere committees formed for the purpose of carrying into execution the extraordinary power assumed by the Government.”

And therefore, the opinion went on to expound, having no authority, and their sentences being wholly illegal, those who pronounced them and carried them out would have to justify themselves before a jury, and show the *necessity* of the executions or punishments for the suppression of the rebellion, and that, not generally, but particularly, of each and every execution or punishment inflicted; so that, if in the judgment of a jury any one execution was not “necessary,” it would be unjustifiable and illegal. The writers of the opinion declared that in the facts disclosed in the despatch they could see no such justification, and they pronounced positively that, as a matter of law, an illegal homicide would be murder. They showed that any one privy to it would be liable for it. They pointed out further that, by the late Criminal Law Consolidation Act, any one who had committed a murder in any part of the British dominions could be tried in this country; and the clear result of their opinion was, that the Governor and military commander who sanctioned the trial of any one executed for complicity in the rebellion, and the court-martial who may have sat upon the case, would be guilty of murder if a jury should be brought to think the

execution not strictly *necessary*, that is to say, a jury *in this country*, many thousands of miles away from the colony, and entirely unacquainted with its condition and circumstances, with which they could only be very imperfectly made acquainted by the means of evidence, and a jury also in a country which was being influenced and prejudiced to the utmost by the most monstrous misrepresentations and the most inflammatory popular appeals, so as to render justice absolutely impossible.

The effect of these misrepresentations as to the facts and this misconception as to the law was to excite an agitation against the Governor and military commanders, under the influence of which the Government, probably as much for the sake of the objects of it as for any other cause, and to allow time for the agitation to subside and for good sense to regain its ascendancy, resolved to issue a commission of inquiry into the nature of the disturbances, and the measures taken for their suppression; that is, with a view to ascertain how far the disturbances were rebellious, so as to justify martial law, and in what manner martial law had been exercised. On the 30th December, 1865, before the answer of the officers could be received, the commission issued. It was directed to Sir Henry Storks, Governor of Malta; Mr. Russell Gurney, Recorder of London; and Mr. Maule, Recorder of Leeds. It ran thus:—

“Whereas it is alleged that great disaffection hath prevailed in our said island, and that sundry evil-disposed persons have concerted the destruction of other of our subjects resident therein: and whereas grievous disturbances have broken out in our said island, and have been suppressed, and the said disturbances and suppression have been attended with great loss of life, and it is alleged that excessive and unlawful severity has been used in the course of such suppression: and whereas it greatly concerns us that full and impartial inquiry should be made into the origin, nature, and circumstances of the said disturbances, and with respect to the measures adopted in the course of their suppression: and whereas it is requisite for the sufficiency of the said inquiry that it should be conducted by persons not having borne part in the government of our said island during the

existence of the said disturbances nor in the suppression thereof, Now know ye that we, reposing especial trust and confidence in the loyalty and fidelity of you, the said Sir Henry Knight Storks, Russell Gurney, and John Blossett Maule, have constituted and appointed you to be our Commissioners for the purpose of making such inquiry as aforesaid ; and we do authorize and require you, with all convenient despatch, and by all lawful ways and means, to enter upon such inquiry, and, jointly or severally, to collect evidence in our said island respecting the *origin, nature, and circumstances of the said disturbances, and respecting the means adopted in the course of the suppression of the same, and respecting the means concerned in such disturbances or suppression*, and we do require you to communicate to us through one of the principal Secretaries of State, as well as the evidence as any opinions which you may think fit to express thereupon. And we do further require that you do in all things conform to such instructions as shall be addressed to you by us through one of our principal Secretaries of State : and we do strictly charge and *command all our officers, civil and military*, and all our faithful subjects, and all others inhabiting the said island and the territories depending thereon, that in their several places and according to their respective powers and opportunities *they be aiding to you in the execution of this our commission.*"

As regards the composition of the Commission it will be seen that, composed, as it was, chiefly of lawyers accustomed to the strict administration of criminal law in our courts, and so naturally prejudiced against summary executions by mere military power, it was not likely to be favourable to the exercise of martial law ; it would be predisposed to take a somewhat adverse view of the subject, and any views it might take, either as to the necessity for martial law, or as to the propriety of its execution, might be safely relied upon as the results of strong conviction and a victory of truth over prejudice ; while, on the other hand, any opinions upon the exercise or continuance of martial law, resting so much necessarily on military considerations, would hardly have the authority derived from previous practical acquaintance with the subject.

As to the powers of the Commission, its terms enabled it to demand and obtain from the local legislature, an Act empowering it to administer an oath ; and, on the

other hand, its very nature as a royal commission, and the terms by which the civil and military servants of the Crown were called upon to aid the execution of the Commission, virtually made it incumbent upon them to be examined. And although the Commissioners gave a caution to the witnesses that they need not criminate themselves, this was, as regards the military officers, entirely nugatory, and practically as regards them, at all events, the inquiry was compulsory and adverse. And although the Commissioners, evidently aware that criminal prosecutions might be instituted, went through the form of giving to the officers the usual caution not to criminate themselves, the caution, as it must have been known, could in their case only be a form; and as counsel attended for the promoters of prosecutions, and were allowed to put or suggest hostile questions, the practical result was this, that the men who had saved a colony from a dangerous insurrection were subjected to a compulsory examination before a royal commission, so as to extract admissions from them for the purpose of criminal prosecution.

The military commander and officers were examined in the most stringent manner as to all that they had directed or allowed in the execution of martial law; every case known of was strictly investigated; and as on the one hand every one who had any instance to adduce was invited to come forward, and the relatives of those who had been executed would of course naturally come forward with the strongest feelings, and on the other hand the officers could only state in justification such acts as were legal evidence, the number of apparent excesses must have been made as large as possible. No instance was likely to escape, and the entire number of executions or punishments ascertained could be relied on as accurate. As regards the total number, it appeared that there had been the grossest exaggeration, and that the Commission had been obtained by the most monstrous

misstatement of the facts. Instead of 1,500 or 2,000 persons having been immolated for a mere riot, which was the case strenuously maintained by those who demanded inquiry, it appeared that 432 persons had been executed in suppression of a very formidable rebellion. Such was the general result of the inquiry, while on the other hand, no doubt, some amount of excess was shown, and in a certain number of cases in which as no sufficient justification was shown, there appeared to have been some degree of rashness, more or less culpable according to the circumstances.

And, as already mentioned, these rash acts in the pursuit and punishment of supposed rebels only took place during the excitement of the first few days after the massacre; and then, for the most part, executions only took place by sentence of court-martial, as to which there appeared no reason to believe there was any wilful injustice, though in some instances there was a want of sufficient evidence.

The important point, however, was as to the responsibility of the Governor and superior officers. As to the *Governor*, it not only did not appear that he had taken any part in the execution of martial law, but it appeared that he *did* not and *could* not give any orders or directions in the declared district, and that military authority was supreme. As to the matter of *right*, the Attorney-General of the colony stated it as his opinion:—

“The Governor makes the requisition for troops, and the General carries it out in detail. I am of opinion that the Governor was the supreme authority during martial law—my opinion is, that as soon as the Governor gave orders to the General to go to the proclaimed districts, the Governor was relieved of the personal responsibility, and that he handed over the districts in question to the military. I regard the General in the field as being the supreme military authority.”

And although the Commander-in-chief, General O'Connor, spoke of it as a “question on which lawyers were

divided," his own conduct showed that he did not deem it doubtful, for he and the General in command within the district acted, as has been seen, entirely on their own authority, without regard to the will of the Governor when it differed from their own.

And then, in point of fact, the Governor gave no particular orders nor directions in the declared district as to the execution of martial law, and only made some general suggestions, chiefly as to the movements of troops and the *general objects* to be kept in view. Thus, in his memorandum of suggestions to the military commander, after suggesting the movements of detachments, he stated the object to be "to cut off and capture the rebels." Whatever suggestions he made were in favour of moderation. This is a letter from the Governor to the Commander-in-chief:—

"I am of opinion that all prisoners should, as rapidly as possible, be tried; and those who are *not deserving* of death, or flogging, be released; it is not desirable, with our overcrowded gaols, to sentence persons to imprisonment, nor would I advise that flogging be resorted to *more than can be helped*."

And in consequence of this the Commander-in-chief wrote to the General in command:—

"In furtherance of the opinion expressed by his Excellency, and in consequence of the large number of prisoners now at Up Park Camp, I am to direct you to take pressing steps to dispose of these cases, either by courts-martial, or, where the charge is not of a serious nature, by the infliction of such amount of corporeal punishment as you may deem the offence merits. Where evidence is wanting in support of a minor charge, release the prisoner with a caution."

And the Commander-in-chief, who always assumed the exclusive right of giving orders to the officers, wrote to one of them thus:—

"I have instructed you to send out parties and capture any rebels they may discover, and I am much pleased by your adopting a more decided course with regard to captured rebels. The numbers you have sent into camp on charges, or suspicion, caused some embarrassment. One of two

courses seems to me, under martial law, to be the rule for you to adopt. If, on careful investigation, the captured prisoners are innocent—always giving them the benefit of the doubt—then release them; but if guilty and taken red-handed, then summary justice and execution.”

Whatever orders there were issued to the officers were issued by the military commander, and the Governor, as already seen, from the nature of the independent function and position of the Commander-in-chief, could not and did not give any particular orders to the military; and could only offer suggestions to the commanders as to military movements, and the general objects to be had in view. Nor did he issue a single order in the declared districts, direct a single execution or a single trial, nor, except in the case of Gordon, see the proceedings in a single case.

So, as regards the military commanders, it not only did not appear that they gave any improper orders, but, on the contrary, it appeared that they gave only orders which were right and proper.

Thus, as to the Commander-in-chief, it appeared that although he gave no particular orders to the principal military commander upon whose judgment he knew he could rely, to another he wrote in these terms:—

“One of two courses seems to me, under martial law, to be the rule for your conduct; if, on *careful investigation*, the captured persons are innocent—*always giving them the benefit of a doubt*—then release them; but if guilty and *taken red-handed*, summary justice and execution of the sentence.” (Ev. p. 1122.)

So the military commander of the district wrote:—

“All ringleaders to be secured, *men found in arms* to be summarily executed.” (p. 6857.)

And again, as to the maintenance of discipline:—

“Order of General NELSON, 25th October.

“The officers commanding will respectively forbid any man to enter the

house of any one, under any pretext whatever, unless accompanied by a commanding officer. Any man found doing so will be handed over to the provost-marshal, for summary punishment."

And again, these were admirable instructions to the officers:—

"It will be necessary for you to exercise strict control over the men of your detachment, and not to permit any man to quit his quarters for the purpose of foraging, &c. You are not sent to your post for the purpose of punishing the negro, but to maintain order; and to afford protection to the inhabitants generally. You are not to inflict summary punishment if any supposed rioter be sent as prisoner to you; be good enough to inquire into the case, and if you consider the same as of a serious nature, send him to my head-quarters, with the evidence against him. You will doubtless have many prisoners brought before you, and many possibly through the animus of the inhabitants. Petty cases of larceny I cannot interfere with; they must hereafter be dealt with by the civil authority. I am quite aware you will be much pressed to administer punishment to supposed criminals, and you must be firm, temperate, and judicious in all communications with civilians. You are not, on any account, to march out for the purpose of attacking anybody. The rebels, if reported in force, which I apprehend is quite impossible, must not be approached without my distinct order in writing. You will be pleased strictly to conform to the instructions herein, and any deviation therefrom will be a source of discomfort to yourself.—(Signed) A. A. Nelson, Brigadier-General Commanding Field Force."

So, there was an excellent memorandum as to the duties of that most important office, the Provost-marshal:—

"6th Nov., 1865.—Memo. for the Provost-marshal. The provost-marshal appeared to consider his powers more extensive than they are. He is simply entrusted with authority to inflict summary punishment on any individual whom he may detect in the commission of offences against order and discipline, and this is only to be exercised upon the commission of any particular offence which may call for an immediate example. No one knows better than myself the necessity, under past circumstances, for speedy action by the Provost-marshal—these now are passed. I, therefore, peremptorily forbid any summary punishment being inflicted within the camp henceforth; and all cases of serious nature are to be referred for my decision, or that of my A.D.C., to whom alone I shall delegate authority to dispose of such.—A. A. Nelson, Brigadier-General Commanding Field Forces, Morant Bay, 6th November, 1865." (This letter was inserted by the Commissioners in their report.)

It will be seen that nothing could be more excellent and admirable than these instructions when issued, but it unhappily occurred that during the excitement of the occasion, and the confusion arising from sending off military detachments in different directions, each at a distance from the commander, as everything could not be foreseen and provided against, some excesses and abuses took place at a distance from the military commander, and of which not even he, still less the Governor, who did not receive reports from the officers, knew anything until all was over.

It was obvious that whether the exercise of martial law had been excessive must depend upon the nature and extent of the danger to be guarded against, and therefore upon the nature of the insurrection, whether or not it was concerted, and the result of any combination or conspiracy, local or general; and whether, even if local, it was or was not, from its nature and character as a rebellion of race, of colour, and of class, likely to spread rapidly, and involve the whole colony in ruin. This was particularly the case with reference to the continuance of trials and executions by court-martial, which, as has been seen, were not vindicated by the Governor on the ground of any local, immediate, present, or imminent necessity, such as justifies killing at common law, but rather with reference to the general condition of the colony, and the urgent necessity for some deterrent influence to aid the disparity of protective force, and therefore for keeping up the terror inspired by infliction of military punishment upon those found guilty, upon summary inquiry, of aiding in the rebellion. Hence the Governor and military commander—and especially the Governor—made lengthy statements, the latter supported by numerous documents tending to sustain the view of the case which had already been submitted in the Governor's despatches; that is to say, that there was a local conspiracy to cause an

insurrection of the blacks, with the object of causing a general rising all over the island for the massacre of the whites; that at the head of this local conspiracy was Gordon, who had been executed as its author; that the nature of the insurrection, as one of class and colour, made it certain that it would, and that it did, in fact, spread rapidly; that the enormous preponderance of the blacks in point of numbers would make such a war of races, should it once become general, speedily fatal to the small white population; and that there was the greatest peril that it would become so, through the sympathy, and readiness to rise, shown everywhere by the blacks. That therefore it was necessary, until military reinforcements should have been distributed, so as to overawe them, to overawe them by means of the terror inspired by martial law.

On the 9th April, 1866, the Commissioners made an elaborate report (received the 30th April) in which, under distinct heads, they gave their opinion as to the origin and outbreak of the disturbances; the suppression of the rebellion, whether as regarded the measures taken, or the conduct of those engaged in it, especially as to the trials by court-martial and the punishments inflicted, with a special report on the case of Gordon :—

“THE ORIGIN AND OUTBREAK OF THE DISTURBANCES.

“The first resistance to lawful authority occurred on Saturday the 7th October, 1865.

“On that day, which was also a market day, a Court of Petty Sessions was held at Morant Bay. There was a case of assault, in which a fine was imposed, with costs.

“When the defendant was called upon to pay the amount, a person of the name of Geoghegan interfered, and told him to pay the amount of the fine only, and not to pay the costs. This caused so much disturbance in the court that business was for a time suspended, and the magistrates ordered that Geoghegan, who was speaking very loud and causing the disturbance, should be brought before them. The constables laid hold of Geoghegan for that purpose, but he was rescued by bystanders, and left the Court-house. He was followed by the police, who attempted to retake him ;

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but a considerable number of persons having come to his assistance, *the police were beaten, and compelled to retreat without effecting their object.* When order was in some degree restored, a summons in which Lewis Miller was the defendant was called on for hearing. This case, from the interest which was felt in it, had caused a numerous attendance at the Court-house on that day.

"It arose out of a dispute relating to an estate in the neighbourhood of Stoney Gut, not far from Morant Bay, a portion of which had been leased out to small occupiers. Some years ago the occupiers had *refused to pay rent for their holdings, on the ground that the land was free, and the estate belonged to the Queen.* The question was then tried, and decided against the occupiers. During the last summer there seems to have been a disposition again to raise the same question, *and a refusal to pay rent was accompanied by the statement that the land was free.* It was for a trespass on a part of this estate that Miller, who was one of the occupiers, was summoned. The case was heard and decided against him, and notice given of an appeal against the decision. On the following Monday, informations having been taken upon oath, warrants were issued for the apprehension of two persons of the name of Bogle, and several others who were stated to have taken an active part in the riot of the previous Saturday. These warrants were placed in the hands of a policeman who, with five other policemen and two rural constables, proceeded early on Tuesday morning the 10th of October to Stoney Gut, a negro settlement about five miles from Morant Bay, where Paul Bogle and some other of the alleged rioters lived. They found Paul Bogle in his yard, and told him that they had a warrant for his apprehension. He desired to have the warrant read to him, which was done. He then said that he would not go, and upon one of the policemen proceeding to apprehend him he cried out, 'Help, here.' At the same time a man named Grant, who was with him, and was addressed as 'Captain,' called out, 'Turn out, men.' Almost immediately *a body of men, variously estimated at from 300 to 500, armed with cutlasses, sticks, and spikes, rushed out from a chapel where Bogle was in the habit of preaching, and from an adjoining cane field, and attacked the policemen. The policemen were, of course, overpowered. Some of them were severely beaten. Three of the number were made prisoners, and detained for several hours, and were ultimately released only upon their taking an oath that henceforth they would 'join their colour,' that they would 'cleave to the black.'* It was stated by Bogle, in the presence of the policemen, that they had expected to go to Morant Bay that day, but that it was then late; that on the morrow there was to be a vestry held at the Bay, and that they expected to come down. *It was said by others that they intended to come down to the Bay 'to kill all the white men and all the black men that would not join them.'*

"Information of what had taken place, and of the threat to come down on the following day, was on the same Tuesday evening given to the

Inspector of Police at Morant Bay, and to Baron Ketelholdt, the Custos of the parish. In consequence of this information the Custos summoned the volunteers of the district to assemble at Morant Bay, and at the same time wrote to the Governor for military aid. On Wednesday the 11th of October the vestry, consisting of certain elected members, and of the Magistrates, who were members ex officio, assembled in the Court-house at Morant Bay at about 12 o'clock, and proceeded with their ordinary business till between 3 and 4 o'clock, when notice was given that a crowd of people was approaching.

"The volunteers were hastily called together, and almost immediately afterwards a *body of men, armed with cutlasses, sticks, muskets, and bayonets, after having attacked the police station, and obtained possession of such arms as were there deposited*, were seen entering a large open space facing the Court-house in front of which the volunteers had been drawn up. Baron Ketelholdt went out to the steps, and called to the people to know what they wanted. He received no answer, and his cries of 'Peace, peace,' were met by cries from the crowd of 'War.'

"As the advancing people drew near, the volunteers retired till they reached the steps of the Court-house. The Custos then began to read the Riot Act. While he was in the act of reading it stones were thrown at the volunteers, and Captain Hitchins, who commanded them, was struck in the forehead. The captain, having received authority from the Custos, then gave the word to fire. The order was obeyed, and some of the people were seen to fall.

"There was some conflict of evidence on the point whether stones were thrown before the firing commenced. That fact, however, was, as it appears to us, clearly established.

"At the time of the discharge of the rifles, the mob were close upon the volunteers. The rioters instantly rushed upon them, and succeeded in disarming some of them. The rest they compelled either to flee, or to take shelter in the Court-house. Here were assembled the magistrates and other members of the vestry, with such of the volunteers as had succeeded in effecting an entrance. Some escaped at once by the back windows, but the greater part remained for a considerable time, being pelted with stones and fired at from the outside; such of the volunteers as had retained their guns also firing from the inside. A cry was then heard, 'Go and fetch fire;' 'Burn the brutes out.' Bogle in particular said, 'Let us put fire upon the Court-house. If we don't, we will not manage the volunteers and the buckra.' Very shortly afterwards men were seen to set fire to the School-house, which adjoined the Court-house. Then, after a time, the fire spread from the roof of the one building to that of the other. As the roof of the Court-house was beginning to fall in, the inmates were compelled to leave the building, and it being now dark, they sought to conceal themselves in different places in the vicinity. Some remained undiscovered throughout the night, but others were dragged from their hiding places, and one by one either beaten to death or left for dead on the ground. The

number of persons killed by the rioters in or about the Court-house appears to have been eighteen, and the number of the wounded to have amounted to thirty-one. After this *the town remained in possession of the rioters. The gaolers were compelled to throw open the prison doors, and fifty-one prisoners who were there confined were released. Several stores were attacked, and from one of them a considerable quantity of gunpowder was taken. Previous to the attack upon the volunteers, an unsuccessful attempt had been made to obtain gunpowder from the same store. An attempt was made to force the door of the magazine, where above 300 serviceable stands of arms were stored. Happily the endeavour was not successful.*"

It became of course important to ascertain whether all this was a mere casual outrage or the outbreak of a planned and deliberate insurrection; and although the circumstances, nature, and character of the outbreak itself made it abundantly manifest, the Commissioners carefully considered the question, and arrived clearly at the conclusion that it was the outbreak of an insurrection deliberately planned and prepared for some time previously :—

"It became, of course, very important to ascertain whether what occurred on this day was an accidental riot, followed, when passion was excited in the heat of the contest, by the killing of opponents, or *whether it had its origin in a planned resistance to the constituted authorities, and whether the killings were premeditated murders.*

"In considering this point it is necessary to refer to the *conduct and declarations of those who took an active part in the riot before and upon the 11th of October.*

"It was proved that *two or three weeks before that time meetings had been held at some meeting houses in the neighbourhood of Morant Bay, at which an oath was administered, and the names of the persons sworn were taken down. The terms of the oath were not shown. All that was proved before us respecting it was that an oath was administered, a pledge of secrecy required, and the names of the persons sworn registered. One witness was told by Alick Taylor (who was one of the persons sworn in his presence, and who was moreover during the sitting of the Commission convicted and sentenced to penal servitude for life for the part which he had taken in the disturbances,) that what they wanted was to have the back lands to work for nothing, and that they were going to kill the Buckra. At the time too of the burning of the Court-house, it was stated by Moses Bogle to one person who had been invited by him to attend one of the meetings. 'This is the same affair I sent to call you about.'* Another meeting, at which

a similar course was pursued, was shown to have been held at Coley, a place about *ten miles from Morant Bay*, on the night of the 9th of October. Those who were present, and who went through the form of swearing, were told that they were to go down to the Bay the next day, and that they would hear what it was for. At another of these meetings Bogle stated that he *must have fifty men from each place, and a captain to each set*. Moreover, one witness who attended a meeting on the 3rd of October, at which an oath was administered to him, and his name registered, was suddenly summoned from his bed late at night on the 9th to go to Stoney Gut. Upon his arrival there he was told that the volunteers and policemen were coming, and that he must assist in keeping guard. He remained in the chapel all night, and was one of those who answered to Bogle's call for help when the police arrived on the following morning. It has already been mentioned that on the arrival of the policemen at Stoney Gut on that morning some of them were compelled to take an oath, and *that the purport of that oath was that they would 'cleave to the blacks.'* It was admitted too by a very unwilling witness, that *for a week before the 11th of October the person before described as Captain Grant had been in the habit of drilling the men at Stoney Gut*; and it was stated by one of the constables who was detained in Bogle's house on the 10th *that he saw a number of men drilled in companies by Moses Bogle and a person who was called Colonel Bowie*. The account, in fact, which was given us of the proceedings on this occasion, was so circumstantial that it deserves a place here. Paul Bogle said, *'Colonel Bowie, take the men out to drill.'* Immediately, as we were told, *about 300 men, armed with cutlasses, sticks, and lances, assembled about Bogle's house in three companies*; one under Bowie, who appears to have taken the lead, a second under Moses Bogle, and the third under James Dacres. *One company at a time went out to drill*; the other two remaining in the yard of Bogle's house. 'Colonel' Bowie's was the first company to be drilled; he ordered his men to fall in in threes, and gave the word of command, 'March.' They marched out in order with drum and shells, and practised marching and the use of their cutlasses. When Bowie's men came back, Moses Bogle took out one of the other companies. Altogether the drilling occupied about three-quarters of an hour. On the morning of the 10th *small parties were seen going, with fife and drum, in the direction from Stoney Gut towards Coley, Somerset, and Mount Lebanon, and some of them were again seen in the evening returning with greatly increased numbers*. The conduct of the rioters on Wednesday the 11th of October was also very significant. They came, or, as some of the witnesses described it, marched into Morant Bay in different parties. *There were individuals who exercised over them some sort of authority, one being addressed as Colonel, another as Captain*. The larger body came from Stoney Gut, where they had been collected from different places in the immediate neighbourhood. *Others came from a distance of several miles from beyond Bath, while one large body, nearly 100*

in number, came from Torrington, a large negro settlement to the north of Stoney Gut, and joined those from the latter place at the entrance to Morant Bay. Here the first thing done was to attack the police-station, and to obtain possession of the arms placed there, consisting of muskets, bayonets, and pistols. The muskets, however, proved to be of little use, as they were without flints. Upon this being discovered by their new possessors, they were heard to say, 'How can they fight us when they have no flints to their guns.' It has already been stated that at this time an unsuccessful attempt was made to obtain gunpowder from a shop in the town. Among the members of the vestry deliberately murdered in the course of the night of the 11th was a Mr. Price, a negro, who had, by his abilities, raised himself to a position in life superior to that of most of his race. When he was first caught, a discussion was overheard as to what should be his fate. One said, 'Kill him.' Another said, 'Don't kill him; we have orders to kill no black, only white.' 'He has a black skin but a white heart,' was the reply, and he was beaten to death. It was proved that after the murders Bogle returned to Stoney Gut, and that there was a service in his chapel in which he returned thanks to God that he 'went to this work, and that God had succeeded him in his work.' With this evidence before us, it was impossible to avoid arriving at the conclusion that there was on the part of the leaders of the rioters a preconcerted plan, and that murder was distinctly contemplated."

Nor could any competent lawyer, reading the above statement, have any doubt that it disclosed the existence of a rebellion and a state of war—a war of races, raised by the blacks against the whites, with a view virtually to destroy the Queen's Government, and deprive the Crown of the colony—a war which rendered all those who took part in it, or were privy to it, or incited to it, amenable to capital penalties of treason, and which, even at common law, by reason of its dangerous and formidable character, would justify the declaration of martial law.

The report went on to state facts tending to the same conclusion, as to the *continuance* or *diffusion* of the rebellion. These facts showed that the insurrection was *rapidly spreading* in every direction, and that similar massacres were committed or attempted in various places. A striking contrast to the representations of a mere riot, on which the Commission had been obtained.

"The designs of some of the insurgents, and the hopes entertained by others, will more clearly appear from what passed during the three days following the rising on Wednesday the 11th. During the evening and night of the 11th some of those who had escaped from the Court-house were concealed in places where they had the opportunity of overhearing the conversation of the insurgents. One heard them say that on the following day they were to go to Bath. Another, who was close to what he described as their guard-room, to which their prisoners were taken, learned that they were to meet at Stoney Gut at two o'clock in the morning; that one party was to go and gather more men; another to proceed to Port Morant and the Plantain Garden River District. These plans appear to have been carried out. We find that there was a meeting at Bogle's in the course of the night, and that men were carried as prisoners by armed parties to Bogle's house; that one was compelled to swear that he would leave the whites and cleave to the blacks; that another was promised that if he would join Bogle he should have the land which he leased for his own from generation to generation; that early on the following morning a party consisting of 200 men armed with guns and bayonets mounted on sticks, and with shells blowing, proceeded to Coley, a few miles to the north-west of Stoney Gut, endeavouring to obtain fresh support, and compelling persons, under the threat of immediate death, to swear that they would henceforth join the blacks; that Bath and the estates in the Plantain Garden River District were attacked in the course of the day, and Port Morant on the day following. The first party who entered Bath came in search of the ammunition belonging to the Volunteer Corps, which had been kept in the house of their late captain. Later in the day, a much larger party came marching in military order, with flags flying and drums beating. They had complete possession of the town till the following day, when on hearing the well-known horn of the Maroons, who at the request of a magistrate resident there came to the relief of the inhabitants, they fled from the place. The stores in the town were pillaged, and property to a large amount was taken or destroyed. The few whites and almost all the coloured inhabitants fled to the bush. The estates attacked in the course of that day and night were all situated within a few miles of Bath.

"At an estate in Blue Mountain Valley, a few miles on the west side of Bath, an armed party of about fifty men, under the command of one addressed as Captain Wilson, attacked the book-keeper, who received wounds, from the effects of which he shortly afterwards died. The life of the son of the owner, who had lately arrived from England, was threatened, and saved through the zealous intercession of his coloured overseer. At Amity Hall, on the other side of Bath, which was attacked by 400 men, Mr. Hire was murdered, and his son left for dead; while Mr. Jackson, the stipendiary magistrate, and Mr. Creighton, were severely wounded, the latter so severely that it seemed scarcely possible that he should survive. The houses upon the other estates in the neighbourhood were attacked and plundered, but

in no other case was murder committed. Search, indeed, was made for different persons connected with the estates, and the intention of killing them if found was openly avowed, but the persons sought for either were absent, or succeeded in making their escape, being in most cases assisted by some of their own labourers. Monklands, which is about sixteen miles up the valley from Morant Bay, was attacked by a party of above fifty men, armed with guns, cutlasses, bayonets, and swords. At Hordley, an estate in the Plantain Garden River District, a large party of women and children, above twenty in number, were obliged to hide in the wood for the night, and to conceal themselves during the whole of the following day and night, until the advance of a small body of troops enabled them to reach a place of safety. And a faithful black servant, who assisted them in escaping, was herself compelled to flee in consequence of her life being threatened. Whitehall, an estate in the Blue Mountain Valley, was attacked by a smaller party. The proprietor, Mr. Smith, was sought for, but escaped in the bush. He died shortly afterwards from the effects of exposure.

"But the originators of the outbreak do not appear generally to have belonged to the labouring class. They were for the most part what are called free settlers, occupying and cultivating small patches of land, and placed in better circumstances than the ordinary labourer. Their great desire was to obtain, free from the payment of rent, what are called the 'back lands.' 'Soon we shall have the lands free, and then we shall have to pay no rent,' was the answer received by one rent collector in the summer of 1865.

"Other evidence of the same description was given, showing that there was, both in St. Thomas-in-the-East, and in some other parts of the island, a vague expectation that in some way the occupiers were in future to be freed from the payment of rent."

Of course one important point was as to the numbers, and another as to the objects and intentions of the insurgents. Their numbers were thousands, their objects and intentions were massacre of the whites:—

"It is always difficult to know how far to rely on the accuracy of ordinary observers when estimating numbers. But there were witnesses who gave evidence as to the number of the insurgents on this day having been at one place 1,500, and at another as many as 2,000, all or the great majority of whom were armed with various kinds of weapons.

"It is impossible not to attach some importance also to the cries which were heard, as not unfrequently the real object of the body of men from which they proceed is thereby disclosed. 'Colour for Colour' was the cry everywhere during the short time that the disturbances lasted. 'Blood, blood,' 'We want blood,' was heard at one place. 'We must humble the white

man before us,' 'We are going to take the lives of the white men, but not to hurt the ladies,' was what was said in the hearing of the widow of one of the persons killed at Morant Bay. 'Hurrah! Buckra country for us. Never mind the Buckra women; we can get them when we want,' was the cry upon one estate. 'We want the Buckra men to kill, but we don't want the women now; we will have them afterwards,' was what was heard upon another, by a faithful woman, who succeeded in hiding her mistress and all the members of her family. Again, 'Don't burn the trash house, we want sugar to make for ourselves;' and 'Don't set fire to the house; only kill the white man, for when we have done that we have the house to live in for myself,' were exclamations heard elsewhere. The several estates to which reference has hitherto been made were all situated to the north or east of Morant Bay. The only movement in an opposite quarter which was made on this same day was in the direction of White Horses, a place four miles to the west of Morant Bay. There a party of thirty or forty persons attacked a shop, plundered the house, and compelled the owners to promise to go over to the side of the blacks. During the next three days the insurgents continued their course through Port Morant northward to Manchioneal, and on to Mullatto River and Elmwood, the last of which places is situated in the most northerly part of St. Thomas-in-the-East, where that parish abuts upon Portland. As they advanced with the cry of 'Colour for Colour' they were joined by a considerable number of the blacks, who readily assisted in the work of plundering. The houses and stores were sacked. The intention also of taking the lives of the whites was openly avowed, and diligent search was made for particular individuals. But in each case the imperilled persons had timely notice, and sought safety in flight. Elmwood was the point farthest from Morant Bay to which the disturbances extended, as on Sunday the 15th the troops arrived at Port Antonio, and put a stop to the further progress of the insurgents northwards. Thus it will be seen that in the course of these few days the insurgents had spread over a tract of country extending from White Horses, a few miles to the west of Morant Bay, to Elmwood, at a distance of upwards of thirty miles to the north-east of that place."

Thus, in the course of less than a week, this mere "local riot" had spread over a tract of country thirty miles in extent. The insurgents were rapidly overrunning the island. They met everywhere with support from those of their own race; their cry was everywhere, "Death to the whites;" their course was marked by ravage and desolation, and their active leaders were still at large, urging them on to rebellion:—

"During these latter days very little was seen by any of the witnesses

of Bogle or of those who were associated with him in the original outbreak. It has been already mentioned that he returned to Stoney Gut on the night of the 11th. He was still there with Craddock, McLaren, and Bowie on the afternoon of the 12th. On that occasion a large number of men met in the chapel, some of whom were afterwards drilled. They were then addressed by Bogle and Craddock. They were told 'that this country would belong to them, and that they were about getting it to take possession; that they had been long trodden under sandals;' that the country had 'long been theirs, and they must keep it wholly in possession.' When the people separated, it was arranged that those who lived on the valley side should leave for their homes, and that 'when the enemy came' they should send a messenger to let the men in Stoney Gut know, and that if any came towards Stoney Gut information should be given to the men in the valley. The *next day* Bogle and McLaren were seen at Chigoe Foot Market, at the head of 200 men, marching up the valley. On the 15th he was at Mount Lebanon Chapel with more than 100 men, when the alarm was given that the soldiers were coming. He then gave directions to the men that they should get their arms loaded, and that those who knew that their arms were not loaded should go and get powder and load their guns. Later in the day it was mentioned in the hearing of a witness, who was for several days detained as a prisoner at Fonthill, that when on that day the troops were coming over a hill in the immediate vicinity of the insurgents, Bogle was in force, and advanced to give them battle, but that he was dissuaded by Cowell, one of the most active of his associates, and that his followers then became panic stricken, and took to flight.

"In corroboration of this account, it is in evidence that Bogle was seen and pursued by General Jackson, who accompanied the troops on that day, at a time when the insurgents were seen to be dispersing.

"On the following day he went with a very small number of followers to the Maroon settlement at Hayfield, but found that all the men had left, and were employed in guarding Bath.

"From that time nothing appears to have been heard of him until the 23rd, when he was apprehended by the Maroons, and taken as a prisoner to Morant Bay."

Such was the state of things up to and upon the date of the execution of Gordon, which it was persistently represented took place when the rebellion had been already thoroughly put down, whereas it will be seen it was at its height.

So much as to the nature and character of the insurrection as shown by the actual facts and circumstances. The Commissioners, however, inquired into its origin, with a

view to discover whether it was the result of a *general conspiracy* for a general rebellion, though they evidently had not directed their minds to the question of a *local* conspiracy with the *object* of a general rebellion, founded upon the certainty of the insurrection spreading, by means of the natural sympathy and community of feeling among those of the same colour and the same class. It is on this part of the subject they considered the case of Gordon, who had been executed as the author of the rebellion :—

“In reporting the result of our inquiry into the origin of the disturbances, it is necessary to allude to peculiar circumstances affecting the parish of St. Thomas-in-the-East. . . .

“We felt ourselves bound to inquire whether the outbreak had a merely local origin, or whether there existed throughout the island a widespread conspiracy for a general rising against the Government at some future time, of which conspiracy the outbreak in St. Thomas-in-the-East was a premature explosion, precipitated by local causes.”

The Commissioners, it will be observed, evidently did *not* consider another and intermediate view, which was one abundantly supported by the evidence and by their own conclusions, viz., that of a *local conspiracy with the object of a general rebellion* :—

“It was with the view of determining this question that in one case we departed from our ordinary course of not inquiring into the guilt or innocence of particular persons who had been tried by courts-martial. We considered that we were concerned with particular cases so tried only so far as to determine whether those broad general rules of evidence which ought to govern all tribunals had been observed ; whether, in fact, the conduct of those who presided at such courts, as illustrated by the proceedings, was open to animadversion.

“The case of Mr. Gordon, however, appeared to us to be different from all others. He was intimately connected with Bogle, the leader of the insurrection.

“He had attended and taken a leading part in certain meetings in different parts of the island which had been held in the course of the summer of 1865, and which were thought to be connected with the supposed conspiracy. He formed, moreover, the only probable link between the plotters of Stoney Gut and the supposed conspirators in other parts of the island.

“At an early period, therefore, of the inquiry we came to the conclusion

that if conspiracy had in fact existed, Mr. Gordon must have been a party to it ; and therefore we determined to admit any evidence which might be tendered in proof of his complicity, whether it had or had not been laid before the court-martial/ly which he was tried.

“ We propose, therefore, to set out that evidence with considerable fullness.

“ The affairs of the parish of St. Thomas-in-the-East were the subject of great interest among many of the parishioners who were friends of Mr. Gordon. Many looked to him for advice, which they relied on and followed.

“ Among these was Paul Bogle, who cultivated a few acres of land at Stoney Gut, a village in the hills, about six miles inland from Morant Bay.

“ A chapel belonging to him, of small dimensions, stood on his land, and was opened about Christmas, 1864. He was a member of the ‘Native Baptists,’ a sect so called as being independent of and distinguished from the London Baptist Mission. Mr. Gordon was an intimate friend and correspondent of Bogle.

“ Mr. Gordon had himself become a Baptist, and had a Tabernacle of his own on the Parade at Kingston.

“ In 1862 Paul Bogle, James Bowie, and George B. Clarke sent a letter to Mr. Gordon from Stoney Gut about his baptism at Spring, a landed property of Mr. Gordon’s, a mile from Stoney Gut and partly adjoining it.”

Here it is to be observed that Stoney Gut, the stronghold of the insurgents, where the insurrection was planned, and where enlisting, arming, and drilling, and all the preparations for it had been going on for weeks under the auspices of Bogle, the intimate associate of Gordon, was adjoining to one of Gordon’s residences.

“ In February, 1864, Mr. Gordon wrote to Bogle :—‘ Dear Bogle,—Things are bad in Jamaica, and require a great deal of purging.’ In March, 1865, Bogle was made a deacon of the native Baptists, and Mr. Gordon signed his certificate as secretary, with R. Warren as pastor. In July, 1865, Bogle wrote to Mr. Gordon, ‘ we expect to have a meeting, and your attendance will require’ (will be required). When Paul Bogle’s house was searched in October, a list of ten names was found there in the handwriting of Mr. Gordon. Mr. Gordon’s own name was at the head of this list, and the nine other names were those of persons connected with Bogle’s party. *A much larger list of names, most of which were original signatures or marks, was afterwards taken from the private writing-table of Mr. Gordon at Cherry Garden. This last list was headed by the name of Paul Bogle, and contained 148 other names, many of which belonged to persons*

who were implicated in the outbreak at Morant Bay. We attach no great importance to these lists, as they may merely show the political connection of Mr. Gordon with Bogle and his friends."

But those who have read the Recorder's examination of Warren about the riot will fancy that the Recorder had a different view of it (Minutes of Evidence, 1067). It was said to have been for an Anti-slavery society (although there is no slavery in our dominions), but the Recorder showed that it could not have been so. No mention was made in the report of most important evidence as to Gordon's having hired a house at *Morant Bay* in 1863, for the purpose of this "anti-slavery society," and for the purpose of holding meetings (Ibid., 1067). Of this society one Clyne was president (Ibid.), and Chisholm (an associate of Gordon's), agent; and it was opposite the house of this person that Gordon's address to the negroes was posted, as disclosed in one of the enclosures of the first despatches. Clyne was examined before the Commissioners, and stated that he had lived at *Morant Bay since the abolition of slavery*, and swore that Gordon had *not* any house there at which he held meetings (Ibid., 735), although Warren had distinctly sworn it, and the witness admitted something about a *wharf* there. The tone of the Commissioners' examination will show their opinion about it. The witness being pressed, admitted that McLaren (one of the insurgent leaders) had a house there, and that in August a meeting was held at *Morant Bay*, in a house of Chisholm's. The Commissioners pressed: "Not a house of Mr. Gordon's?" "No; I don't know that Mr. Gordon had a house there." The Commissioners also pressed Mrs. Gordon a good deal about this house that Gordon was said to have had at *Morant Bay* (Ibid., 724). "Don't you know he had a place at *Morant Bay*?" "There was a *wharf* place at *Morant Bay*, but the lawyer can speak about that." "It was a wharf he began at *Morant Bay*." "Were there

any *buildings* connected with it?" "No." "No store-house?" "No; I don't know that: I have not been there" (Ibid.). It is plain that the Commissioners believed he *had* a place there; and it was after all this Warren admitted that he had.

A negro witness stated before the Commissioners:—

"Long before October I had been accustomed to meet the Boggles at the chapel at Morant Bay. I was at the Morant Bay meeting under a tree, in August last. Mr. Gordon was holding the meeting. The Boggles were there. Mr. Gordon was the chairman. He said people were working hard there to pay taxes and rent, and *all the outside lands should be given up to the poor black people*. Bogle spoke besides Gordon. In 1864 I was at Stoney Gut chapel. McLaren was there. A person by the name of Warren was the minister of the day. After he had finished preaching, I heard Bogle read out names for a collection to give the minister. In September, 1865, I was at a chapel at Fort Hill, and McLaren came from Morant Bay to hold a meeting, and he said *there was plenty of stir at Stoney Gut*, and he was sent by Bogle to hold a meeting to call up the people. McLaren wanted the people to be sworn in as volunteers. The oath was to stand by my own country. He said *he came to press up the people, and every one must come out as a soldier*; and that they were going to Morant Bay, and that there would be war. (Minutes of Evidence, p. 157, 158.)

It is remarkable that no mention was made of all this important evidence, which, perhaps, amidst the immense mass of it escaped their attention. They, however, noticed a great deal of evidence, showing what they called a "strong feeling" on the part of Gordon against the leading persons of the parish, who were all slain in the massacre, and whose destruction he, it will be seen, repeatedly and significantly predicted:—

"Mr. Henry James Lawrence was Mr. Gordon's manager and resident agent on his estate called 'Rhine,' near Bath, in St. Thomas-in-the-East, and in letters addressed to him the interest in parish matters felt by Mr. Gordon in common with many of his adherents there, is expressed strongly in respect of the conduct of members of the vestry towards himself.

"Writing to Lawrence on 30th January, 1856, he remarks, 'Baron and Herschell are busy *publishing* lies against me in Spanish Town, so as to get the grant of money, £262. I shall be obliged to speak in very plain terms on the subject. Can you send me Nibs on the subject? which may help me. They are a very wicked *band*, and the Lord will yet reward *them all*. . . . I note what you say of ———. He is a sort of

fiend, who, although chastised, has remained hardened. We can afford to spare him, and perhaps England will better agree with him. *Mark, the reign of others will also soon be cut short.*

“Again, on 6th March, 1865, he writes to Mr. Lawrence :—

‘I note what you say re Oxford and Walker, and Ketelholdt,—the parish will be well rid of Walker, but the evil will be doubled (?) in Baron, and I quite agree with your sentiments. *We must wait and see what the end will be of all these evil doers!* . . .

“And, again, on the 29th April, 1865 :—

“‘I have no doubt there are dual actions and strong under-currents against me, but wait and see the end of it, *be not cast down*, the Lord is at hand. . . . There is a sort of present exultation in the Baron, Herschell, Cooke, &c., all *their points being carried*. . . . I note the great and glorious gathering at Rhine House ; *this is very beautiful.*’

“Messrs. Warmington and Henry Seymour Kennedy are new J.P.’s for St. Thomas-y’-East, and some few more are expecting. All *very beautiful*. Great concerns for great men ! *Keep you quiet and see the end of it all.*

“On the 4th of May he wrote, ‘I know the inveterate dislike of Herschell and all his confreres. *They will soon all find their level, and go like chaff against the wind.*’

“Mr. Gordon was staying at Hordley, in the Plain Garden district of the parish, in June, 1865, and in conversation there with Mr. Harrison, he was spoken to about the state of the feeling among the people, and told that he could not control it. In reply, ‘Oh?’ said Mr. Gordon, ‘if I wanted a rebellion I could have had one long ago. I have been asked several times to head a rebellion, but there is no fear of that. I will try first a demonstration of it, but I must upset that fellow Herschell, and kick him out of the vestry, and the Baron also, or bad will come of it.’

“On 13th of July he wrote to Lawrence at the Rhine, ‘Herschell has got another £40 for pews at Bath Church, through the aid of his friend Piree. What will these (?) men, surely some calamity *will come* on them.’

“About the same time, conversing with Mr. Arthur Beckwith at Kingston, about a meeting held on the subject of labourers and wages, Mr. Gordon was told it was calculated to excite a spirit of disaffection amongst the people ; to which Mr. Gordon answered, “Ah ! well, we must have it some way or the other ; this is the great movement ; and if we do not secure it in this way, *in six months there will be a revolution in the country, and as I have always stood by the people I will stand by them then.*”

The Commissioners also stated the still more remarkable conversation between Gordon and another friend, one Ford, about two or three weeks before the rebellion :—

"He had been speaking with reference to his speeches at the Vere meetings. He had been complaining of the manner in which the newspapers were abusing him, and misrepresenting his Vere speeches, stating that he had said that Jamaica was to become a second Hayti. He asserted that he had not used those words. I said, 'It seems strange *you are friendly with me*; but reading the papers, and judging from your speeches, you are *exciting the people to cut our throats*.' He said I must not suppose he *meant* anything of the kind. He said that he went down to *speak peace to the people*. I said the kind of peace, as it seemed to me from the paper, was to tell the people, 'Don't hit them,' at the same time making them discontented. I told him that putting all his speeches together, it seemed like putting fire to a barrel of gunpowder, and calculated to do much harm. Then I said, 'Supposing that the people were to be such fools as to rise in rebellion, do you think that even in the event of their being successful in cutting all our throats—which is perfectly possible in the first rising, if they took us by surprise—that England either could not or would not avenge us amply?' He said, 'Ah! you are quite mistaken there. *All the power of the great Napoleon could not put down the rising in Hayti, and that was successful; for the troops died of disease before they could meet the people in the mountains.*' He also said, *India is not a case in point, for India is a flat country, and the English troops could overrun it and conquer it; but this country is a mountainous country, and before the British troops could reach the people in the mountains, they would die of disease.*' Of course, he said this in mere abstract talking."

The Commissioners mention other matters, and among others, his inflammatory address originally issued for the end of July, on the occasion when the outbreak was apprehended, on the 1st August, and *kept in circulation since that time*.

"On 11th August a printed address to the people of St. Thomas-in-the-East, headed 'State of the Island,' was posted up on a cotton tree in the main road at Morant Bay, opposite William Chisholm's house. The original draft of this address, in the writing of Mr. Gordon, was given by him to a compositor at Kingston shortly before, to be set up in type, with directions to forward copies to one Rodney at St. Ann's Bay, others to James Sullivan at Bath, and further copies to Paul Bogle and to William Chisholm at Morant Bay.

"These copies were sent. In this address is found the following passage:—

"'People of St. Thomas-in-the-East! You have been ground down too long already; shake off your sloth, and speak like honourable and free men at your meeting. Let not a crafty, jesuitical priesthood deceive you.

Prepare for your duty. Remember the destitution in the midst of your families, and your forlorn condition. The Government have taxed you to defend your own rights against the enormities of an unscrupulous and oppressive foreigner, Mr. Custos Ketelholdt. You feel this. It is *no wonder you do*. You have been dared in this provoking act, and it is sufficient to extinguish your long patience. This is not time when such deeds should be perpetrated, but as they have been it is your duty to speak out and to act too. *We advise you to be up and doing*, and to maintain your cause. You must be united in your efforts.'

"An open-air meeting on Saturday, August 12th, held in the market place in front of the Court House, at Morant Bay, under a gynnep tree, was presided over by Mr. Gordon, at which Paul Bogle and Moses Bogle were present. Resolutions on the conduct of the Government, and on the depressed state of the labouring classes, and the price of labour, and low rate of wages, were passed; and in reference to the circular called the 'Queen's advice to the people,' Mr. Gordon said that 'The Queen's message to the working classes of Jamaica is not true; it is a lie; it does not come from the Queen; the Queen does not know anything about it.'

"At the time of this meeting Mr. Gordon was staying at his cottage on the Rhine estate, sixteen miles from Morant Bay.

"In familiar conversation with Mrs. Major, the wife of Dr. Major, his tenant of part of that estate, he was told by her that in his speeches which she had recently been reading he was certainly guilty of high treason, and she would accuse him of it. He replied, 'Oh, no, they have printed it wrong; I never made use of such expressions, and you can't do it. I have just gone as far as I can go, but no further.'

"In this conversation he spoke of the Governor as 'a wicked man,' and said 'that it *would be a blessing to the country if some one would shoot him;*' and that '*Mr. Herschel and the Baron were "bad and wicked men," and it would be a blessing if these three men were removed.*'"

These three gentlemen, it will be remembered, were amongst those slain in the massacre, by the men to whom those sentiments were addressed.

"On the night of the 15th of August a meeting was held at a house belonging to Mr. Gordon at Morant Bay, opposite the Wesleyan Chapel, at which James McLaren acted as Secretary, with about thirty persons present; from this meeting five persons were turned away as spies, who had not previously attended the meeting on the 12th of August.

"Mr. G. W. Gordon attended, and spoke at a meeting held at the 'Alley' in Vere on the 4th of September. He is thus reported to have spoken, amongst other matters. 'They report to the Queen that you are thieves. . . . The notice that is said to be the Queen's advice is all trash; it is no advice of the Queen at all. . . . I was told by some of you that your overseers said that if you attended this meeting

they would tear down your houses. Tell them that I, George William Gordon, say they dare not do it. It is tyranny. *You must do what Hayti does.* You have a bad name now, but you will have a worse one then.'

"Dr. Bruce, a friend and political supporter of Mr. Gordon, who introduced him to the meeting, and took a part in it, and some others, deny that Mr. Gordon ever made use of the words 'You must do what Hayti does.'

"The speech, however, containing these words, *was taken down at the time in some careful notes* by a witness (Peart), who produced the same before us. These notes were well and distinctly written. It would further appear that this speech *must have contained some matter at least calculated to excite some alarm of disturbance*, from the following passage in a letter addressed to Dr. Bruce by Mr. Sydney Levin, the editor of a local newspaper, in reference to this Vere meeting. 'I could scarcely command vital thought enough yesterday to do justice to your meeting, and against the wish of William I wrote the feeble editorial that appeared to second the noble exertions of the Vere people. All I desire is to shield you and them from the *charge of anarchy and tumult, which in a short time must follow these fearful demonstrations.* How I succeeded you must judge for yourself.'

"On the 8th September, Lawrence (Gordon's agent) wrote to Mr. Gordon, 'The day of retribution draws nigh.'

It may be mentioned here, that this man (Gordon's own agent) was clearly privy to the massacre, having been proved by several respectable witnesses to have spoken to them about it on the day it occurred, and before it was known—evidence upon which he was tried and executed by court-martial.

"On the 11th September Gordon wrote to Lawrence, 'The case of Gordon v. Ketelholdt terminated yesterday in a verdict for the defendant, but it *shall not rest here*: these multiplications of wrongs are only the *gathering up of future troubles.*' On the 14th September he wrote to Lawrence, 'I fear we cannot mend matters in St. Thomas-in-the-East. I believe the Governor and his nest of Custodes are capable of anything; *the Lord will soon scatter them as the chaff before the wind.* Wait, and see the result.'

"On the 28th of September he wrote to Mr. Lawrence:—Poor *Jackson* was in the midst of conspiracy. Rector Cooke will get up a charge of conspiracy against any one over whom the Governor has power, and get him dismissed. The man, Mr. Eyre, is an arch liar, and he supports all his emissaries *The wicked shall be destroyed.* This is decreed. God is our refuge and strength, a very pleasant (*sic*) help in trouble."

This was at the end of September. The outbreak began on the 7th October; the massacre was on the 11th October. That massacre was conducted by Gordon's associate, Bogle. His own agent, to whom he thus wrote, was proved to have been privy to it. And in that massacre all the persons he had thus for months been denouncing, and whose destruction he had predicted, were—under the auspices of his intimate associates—slain. The Commissioners, as to this, reported:—

"The news of the events of Wednesday evening, the 11th of October, did not reach Kingston till Thursday, the 12th of October, at noon.

"On the 11th October, Mr. G. W. Gordon was residing at his property, 'Cherry Garden,' in St. Andrews, a short distance from Kingston. He was engaged in trade, and had business offices in that town, where he went on that day, returning home in the evening. *On his return, he is said by his wife to have informed her of the outbreak at Morant Bay.*

"*As the outbreak took place at a distance of more than thirty miles, late on the afternoon of the 11th, and was not known in Kingston till the middle of the following day, it was suggested to Mrs. Gordon that probably it was on Thursday, the 12th, that Mr. Gordon first spoke to her on the subject. Upon this she replied, that 'Wednesday evening he brought the news,' and that 'Mr. Gordon came up on the 12th, and said the outbreak at Morant Bay was true that we had heard of on the Wednesday. He added, 'that the feeling seemed to be so strong to put (sic) a pistol to him, and get rid of him, as they did the President of America.'*

"When the news of the events of October 11th reached Kingston on the following day, they were not fully believed by many persons there in the first instance.

"On this day, about 2 o'clock, Mr. Lee, a friend of Mr. Gordon, mentioned to him the news of what had happened at Morant Bay, and Mr. Gordon seemed much distressed.

"Mr. Lee said, 'George, I fear your agitation at Morant Bay has been the cause of all this.' Mr. Gordon said, 'I never gave them bad advice. I only told them the Lord would send them a day of deliverance.' And when speaking of Baron Ketelholdt being killed, Mr. Gordon added '*I told him not to go, but he was such an obstinate man.*'

"Dr. Major, Mr. Gordon's tenant at the Rhine, about 16 miles from Morant Bay, was at 7 o'clock on the morning of October 11th, leaving the Rhine in order to attend the meeting of the vestry at Morant Bay. He met Mr. Lawrence (Gordon's agent) as he came out of the gate, *who tried to dissuade him from going, by saying, 'I should strongly advise you not to go.'* Dr. Major went, however, and about 2 o'clock Mrs. Major sent to

Lawrence for intelligence, at which hour he called on her at the Rhine, saying that 'he heard nothing further than that there was a great disturbance, but that she need be under no apprehension about the doctor, he would be quite safe, but the Baron and Mr. Herschel he feared were doomed.' *This conversation was in point of time before the fight had begun at Morant Bay, where, according to all the evidence, the Baron and Mr. Herschel were not killed till after 5 o'clock.*

"About 3 o'clock the same afternoon Mrs. Major again made inquiry by note sent by her servant to Lawrence, and he then sent word by the servant to her, 'that the doctor would be quite safe, but Mr. Herschel and the Baron he had no hope of.' About the same time he also wrote, to her the following note :—

" 'Dear Madam,

" 'Things seem in a fearful way ; doctor did not seem to know of the rebellion at Morant Bay till I told him, but I beg you will not be troubled. I have no doubt the feeling will be quieted. The volunteer force moved on the scene of action this morning at 1 o'clock. I will let you know if anything more transpires.'

" *This note was received before 4 o'clock on the 11th of October, and at that time the events had not yet ended in the deaths of the Custos and Mr. Herschel, nor could the news of what had happened at Morant Bay have reached the Rhine at a distance of sixteen miles.*

"On the 12th October, the next day, Lawrence wrote to Mrs. Major as follows :—

" 'Dear Madam,

" 'I am sorry I have no reliable news for you. I have heard a good deal, but think much of what I hear is false. There is a report about the doctor, but the same is not true. *The negroes know full well who fit for retribution.*'

"On the 12th October Gordon wrote to Lawrence :—

" 'Terrible things are doing at Morant Bay. I know nothing of the proceedings or the particulars, but here I am blamed for it all. *I feel for the poor people of Morant Bay.* A steamer with detachments of troops has gone up. I wonder how it will all end. The Lord have mercy ! *I regret that the people have acted unadvisedly.* This is sad matter to contemplate.'

"On Friday morning, the 13th October, he went over to Spanish Town before 10 o'clock in the morning. The case of Gordon v. Ketelholdt had been fixed for argument in Court there that day. He called at the office of his attorney there, and asked how the matter stood, and was told that the suit was at an end, in consequence of the death of the Baron, if that fact

was true. He then made inquiries as to the costs of the suit, whereupon his attorney declined under the serious existing circumstances to enter into such details. A person then present remarked to him that there was plenty of time for him to go to St. Thomas-in-the-East, and to exercise his influence on the side of order; to which Mr. Gordon replied, 'If I go to St. Thomas-in-the-East, the moment martial law is proclaimed I shall be the first man hung.'

The Commissioners went on to make comments on these facts; and the facts they stated have all the more effect, on account of the evident desire of the Commissioners to put the case as favourably as possible to Gordon. They actually commenced by taking, and adopting as true, Gordon's own account of his conduct:—

"Upon a careful review of this evidence we have formed the opinion that the true explanation of Mr. Gordon's conduct is to be *found in the account which he has given of himself*. 'I have just gone as far as I can go, but no further.' 'If I wanted a rebellion I could have had one long ago.' 'I have been asked several times to head a rebellion, but there is no fear of that. I will try first a demonstration of it, but I must first upset that fellow Herschel, and kick him out of the Vestry, and the Baron also, or bad will come of it.'

"Mr. Gordon might know well the distinction between a 'rebellion' and a 'demonstration of it.' He might be able to trust himself to go as far as he could with safety, and no further. But that would not be so easy to his ignorant and fanatical followers. They would find it difficult to restrain themselves from rebellion when making a demonstration of it.

"If a man like Paul Bogle was in the habit of hearing such expressions as those contained in Gordon's letters, as that the reign of their oppressors would be short, and that the Lord was about to destroy them, it would not take much to convince him that he might be the appointed instrument in the Lord's hand for effecting that end; and it is *clear that this was Bogle's belief*, as we find that after the part he had taken in the massacre at Morant Bay he, in his chapel at Stoney Gut, returned thanks to God that 'he had gone to do that work, and that God had prospered him in his work.'

"*It is clear, too, that the conduct of Gordon had been such as to convince both friends and enemies of his being a party to the rising.*

"We learn from Mr. Gordon himself, that in Kingston, where he carried on business, this was the general belief as soon as the news of the outbreak was received.

"*But it was fully believed also by those engaged in the outbreak. Bogle did not hesitate to speak of himself as acting in concert with him.* When

Dr. Major was dragged out of his hiding place on the night of the 11th of October, *he saved himself by exclaiming that Mr. Gordon 'would not wish to have him injured,'* and when Mr. Jackson made a similar appeal for his own life to the murderers of Mr. Hire it appears to have been *equally successful.* *The effect which was likely to follow the meetings which took place during the Spring and Summer of 1865, in some of which Mr. Gordon took a part, was foreseen by one of his most ardent supporters, who, writing to a common friend on the subject of an article he had inserted in a newspaper respecting the Vere meeting, used these words, 'All I desire is to shield you from the charge of anarchy and tumult, which in a short time must follow these fearful demonstrations.'*”

“Although, therefore, it appears exceedingly probable that Mr. Gordon, *by his words and writings, produced a material effect on the minds of Bogle and his followers, and did much to produce that state of excitement and discontent in different parts of the island, which rendered the spread of the insurrection exceedingly probable,* yet we cannot see, in the evidence which has been adduced, any sufficient proof either of his *complicity in the outbreak at Morant Bay, or of his having been a party to a general conspiracy against the Government.*”

Here it will be observed, as most remarkable, that the Commissioners, in their special and careful finding about Gordon, *do not negative the real charge against him, that he was party to a local conspiracy for an insurrection, which they found to have existed, and which, of course, if successful, he must have known—as his own language about Hayti showed—would have spread with rapidity, and speedily become universal and fatal.* The Commissioners cannot see in the evidence any sufficient proof (*i.e.*, sufficient to satisfy *them*) of complicity in the outbreak, that is, the *particular* outbreak, an outbreak on that particular day and hour, *or of his having been a party to a general conspiracy against the Government,**

* Before the inquiry commenced, a gentleman named Edenborough communicated to the Secretary of State information clearly tending strongly to connect Gordon with certain Haytian negroes who were in Jamaica at the time, and with some plan they had in contemplation for securing the independence of the island as a negro state. He wrote to Mr. Cardwell, just before the Commission issued, as follows:—

“*Mr. Edenborough to Mr. Cardwell.*—In June last I was at Kingston, Jamaica, for a few days, having landed from a vessel the property of the Confederate States of America, which remained in the offing. Whilst in Kingston I was called upon by Gordon, who said he was connected with the Government of the island. He stated he understood it was my desire to dispose of the vessel and armament, the war

i.e., a conspiracy all through the island; but they carefully refrain from negating complicity in a local insurrection, which must, if successful, soon become general.

being concluded, and said he wished to purchase the arms on board and the vessel (a beautiful clipper-schooner) if possible. The arms he wished to purchase consisted of breech-loading rifles, nine shooting pistols, hand-grenades, small torpedos, and whatever accoutrements, fixed ammunition, and gunpowder there might be on board. He wished them to be landed on the south side of the island in the neighbourhood of Black River. He expressed himself as a strong sympathizer with the Confederate States in their struggle for independence. On learning that I intended sending the crew of the schooner to England on board a vessel then lying in Annotto Bay, on the north side, he proposed to charter the vessel for a voyage to the Island of Great Inagua and back, there to receive on board a certain refugee Haytian general, and one or two others, and to touch at St. Nicholas Mole, Hayti, for another on the return voyage. A quantity of arms and powder, which he stated had arrived at Inagua from the United States, were also to be brought down to Jamaica and landed in the neighbourhood of Black River. He was accompanied at the time by a bright mulatto, whom he introduced to me as a general, and whom I frequently saw afterwards in Kingston, where he resides. He referred me to a mercantile house of credit in Kingston, who would become responsible in case he should become the purchaser of the vessel and armament, or the voyage to Inagua should be made, both of which I declined. I was then under the impression he was connected with the Dominicans against Spain, as in his conversation he and his Haytian friend inquired the possibility of converting ordinary small boats into torpedo rams against war-vessels block-ading ports, &c."

This was confirmed by the fact that a schooner was seized with several Haytians on board, among whom was a General Lamotte (see the Parliamentary Papers on Disturbances, and also the evidence in Mr. Eyre's case), and with arms and ammunition on board.

Somehow or other (it never was clearly explained how) this gentleman was not examined by the Commissioners in London, nor was his evidence obtained in Jamaica; and though a Mr. Stewart mentioned the matter to them (Minutes of Evidence), they never went further into it. It happened, however, that after their inquiry was concluded, the matter was in more ways than one established upon oath in the course of judicial proceedings in this country. In an action against Mr. Eyre, the writer of the above letter made an affidavit verifying the facts; and afterwards some of the assailants of Mr. Eyre having assailed Mr. Edenborough, asserting that his story was false, he brought an action, substantiated his truthfulness in the witness-box, and received damages. Thus it may fairly be taken that the above—especially as it was remarkably confirmed by various facts in the evidence before the Commissioners—was in substance true; and that being so, it tallies entirely with the evidence as to Gordon's mind having been running upon insurrection, and especially upon the precedent of Hayti. It was reported to the Commissioners that Gordon said that *all the powers of the great Napoleon could not put down the rising in Hayti*; and that it was successful because *the troops died of disease before they could meet the people in the mountains*. And he added that India was not a case in point, for India was a flat country, and the English troops could overrun and conquer it; but Jamaica was a mountainous country, and before the British troops could reach the people in the mountains *they would die of disease*. All this strongly confirms the view evidently taken by the Commissioners that Gordon was a party to the local conspiracy with a general object.

On the contrary, they expressly find that he used language calculated to incite to such an insurrection; that is, language which, therefore, he must have known would lead to it, and therefore must have *intended*. The Commissioners went on to say:—

“On the assumption that, if there was in fact a *widespread* conspiracy, Mr. G. W. Gordon must have been a party to it, the conclusion at which we have arrived in his case is decisive as to the non-existence of such a conspiracy. The only evidence beyond that of vague rumours in any degree tending to show an intended rising at some future time was given by one witness, who deposed to a statement made by an insurgent engaged in attacking a property in the neighbourhood of Bath, that ‘it was not their time; that Christmas was their time, and they were preparing for it, *but as it had come on so soon they must go on and mash down everything, and kill all the white and brown.*’”

That, indeed, was, in a single sentence, the whole case. From some cause the insurrection had come sooner than was expected. In that sense it might not have been general or extending all over the island. The attempt to arrest the leaders had evidently precipitated matters, but it is plain, from the facts found by the Commissioners, (1) that there was a conspiracy for an insurrection; and (2) that it was well known that if successful it must speedily become universal. This was the whole case. And such being the result of the Commissioners’ report as to the insurrection, it appears still more plainly from their statement and approval of the military measures taken for its suppression, and, above all, to *prevent it from spreading*.

In the first place, they distinctly approved the declaration of martial law, and evidently understood it in the sense in which it had always been understood, as something different from common law, and very terrible in its nature. They stated:—

“The Privy Council were then summoned. They met on the evening of the 12th, and all the information which had been received up to that time was laid before them. They came *unanimously to the conclusion that*

it would be desirable at once to proclaim martial law. By an Act of the Local Legislature of 9 Vict. c. 35, after a recital that the appearance of public danger by invasion or otherwise may sometimes render the imposition of martial law necessary, but that, from experience of the mischief and calamities attending it, it must ever be considered as amongst the greatest of evils, it is provided that martial law should not in future be declared or imposed but by the opinion and advice of a Council of War."

And then they quoted the terms and the declaration of martial law, as drawn by the Attorney-General and approved by the Chief-Justice:—

"That martial-law shall prevail ; that our military forces shall have all power of exercising the rights of belligerents against such of the inhabitants as they may consider opposed to the Government and the well-being of our loyal subjects."

The Commissioners then went on to say :—

"We are of opinion that the Legislature of Jamaica, in the recital to the Act just referred to, have not in any sense exaggerated the magnitude of the evils attending martial law ; and we are confirmed in that opinion by what is shown to have taken place in the island during the few weeks of its continuance. *But with the full knowledge of all that had occurred,* we are nevertheless also of opinion that upon the information before them, and with the knowledge they possessed of the state and circumstances of the island, *the Council of War had good reason for the advice which they gave, and that the Governor was well justified in acting upon that advice.*"

That is to say, in declaring and carrying out martial law as it had always been understood, and as it was evidently understood by the Legislature of Jamaica, and as it had, in fact, been understood and carried out on this occasion, excluding, of course, any exceptional excesses ; and they accordingly proceeded to consider its execution with a view to the question of excess. It had evidently never entered into their heads that "martial law" could possibly be supposed to mean anything *but* martial law, *i.e.*, *lex martialis*, or the law of war, or that it could mean the application of *military* law to the militia, or soldiers of the Crown, who, as soon as they are called out, are, *ipso facto* by the Mutiny Act, subject to military law. They con-

sidered that martial law meant *martial law*. That is what it had always been understood to mean; namely, the law of war. And they proceeded to consider its execution under the two main heads into which it is divided—military operations, or measures of warfare, and military executions, or measures of summary justice. And first, as to the military operations, as to which it is to be observed that these operations,—which are entirely approved, and which therefore, it is to be presumed, and it is indeed apparent from the whole tenor of their remarks, and the effect and result of their report, were really necessary, that is, on account of a rebellion actually existing, even although not in the form of actual insurrection,—were carried on, and covered the district the scene of martial law, up to the end of the month—a period a whole week later than Gordon's execution.

“The Military Operations.—When intelligence of the outbreak reached the Government, troops were immediately sent to the scene of action, the object being to limit the disturbances within certain bounds. With this view, detachments composed of the West India regiments serving in Jamaica were despatched to Morant Bay and to Port Antonio, at each of which places military posts were established. At the same time a party of the 2nd battalion 6th Regiment marched from Newcastle to proceed along the line of the Blue Mountain Valley, *endeavour to interrupt the insurgents who were reported to be advancing by that route.*

“Troops were also sent to Linstead in St. Thomas-in-the-Vale, about 14 miles to the north of Spanish Town; and volunteers, pensioners, and special constables were enrolled for the protection of Kingston, and for the general maintenance of order.

“These military arrangements appear to us to have been prompt and judicious.

“By confining the insurgents to the parish of St. Thomas-in-the-East and its neighbourhood the disturbances were kept in check, and were prevented from spreading to other parts of the island.”

So that there was danger of this, which implies that, to use the language of an imperial statute, the Act allowing martial law in Ireland, “the spirit of rebellion pervaded the island, and *had been manifested* by an actual insurrec-

tion." To repress it, and *prevent it from breaking out again*, was the object of martial law and of the military measures and movements which are thus particularly described. Thus, for instance, it is stated :—

"Easington was again occupied from *the 21st to the 29th of October*, with the view of keeping up the communication with the troops who were posted under Colonel Hobbs in the Blue Mountain Valley. By order of Brigadier-General Nelson, who was in command at Morant Bay, Lieutenant Adcock of the 6th Royal Regiment, and ten men, accompanied by a body of volunteers and armed planters, marched northward from the Bay through Leith Hall to Golden Grove on the Plantain Garden River *on the 21st of October*. On the morning of the same day Ensign Cullen was sent with 50 men of the 1st West India Regiment southward from Manchioneal to meet Lieutenant Adcock."

So that for a whole week after the execution of Gordon the country was the scene of *necessary* military operations, that is, *military operations necessary for the suppression* of rebellion, and during that period, it appeared that rebels were actually in the field against the troops; for the Commissioners state as to one of the detachments :—

"Acting on intelligence that *the rebels in force were occupying forts* they had made at Torrington, Colonel Fyfe proceeded to march upon and attack the place, and *as he advanced several shots were fired at his party, and one man was wounded*.

"The steep and wooded nature of the ground made it necessary to act with caution. *The place was attacked on Saturday, October 21st, and the insurgents were driven out*. Seven of them were shot in the attack. The huts of the settlement, *in which large quantities of plunder were found*, were burnt; but orders were given by Colonel Fyfe that in the burning of houses care should be taken to leave some building as a place of shelter for women and children. On proceeding through the country to Stoney Gut a party of Maroons, under Colonel Fyfe, shot four men, one of whom was wearing the ring of the deceased Custos, Baron Ketelholdt. *The insurgents had constructed in this part of the country, between Torrington and Stoney Gut, a rude field-work, by felling large trees, and throwing them as a barricade across the angle of the road; they were removed with considerable difficulty*."

This was on the *day of Gordon's trial*, and it will be important to bear this in mind, when it is found after-

wards stated in the criminal prosecutions, even upon judicial authority, that not only at the time of the trial, but for some time previously, the rebellion had been entirely suppressed. It may be mentioned here, that the last-mentioned detachment were Maroons, who were said to have killed "*hundreds*" in the bush. The Commissioners stated that the *total number was 25!* and of these almost all were (as they stated the facts) justly killed, indeed most of them in actual conflict. The Commissioners carefully described all that took place in the execution of martial law under its two heads of military operations and military executions, both of which were distinctly pointed at in the Governor's first despatches to the Secretary of State, when he described the steps he had taken to put down the rebellion.

"I may premise that there were three principal objects to be attained :—

"First. To save the lives of the ladies, children, and other isolated and unprotected persons in the districts where the rebellion existed.

"Secondly. To head the insurrectionary movement, and prevent the further spread of the rebellion in its progress along and around the east end of the island.

"Thirdly. To punish the rebels, and restore peace to the disturbed districts."

The Commissioners detailed all the operations undertaken and all the measures to be adopted, very much as the officers had described them in their reports at the time; mentioning any instances of excess, and taking, at the same time, due care that the responsibility for it should be placed on the right party, and not upon the officers, but the actual perpetrators, where the sanction of the officers did not appear, nor throwing upon the Generals the responsibility of acts not within, but contrary to, the orders they had issued.

"On Friday, the 13th of October, Captain Luke was sent forward from Morant Bay with a force of 120 men of the 1st West India Regiment to

Bath, which he reached on the following day. At the 'Rhine,' an estate near Bath, *he found nearly 100 refugees, consisting of the women and children from the families of the surrounding districts.* These refugees were escorted to Fort Morant, whence they were embarked for Kingston. *Many of them had undergone severe privations, and some were severely wounded.*

"On the morning of the 14th a man was tried by court-martial at Port Morant, and executed, who was said to be one of the leading rebels, and *had threatened the life of the Collector of Customs at that place.* During the same day a party of fifty marines and sailors under Lieutenant Oxley, Royal Navy, advanced from Morant Bay, westwards as far as Easington. On the road two negroes were seen running away, and failing to stop when ordered to do so, they were both shot. The same fate befell a prisoner, who during the march attempted to escape by flight. A fourth man was tried and executed, by order of court-martial, at Easington, for having joined in the outbreak on the 11th. On the 18th of October 90 men were sent up to Stoney Gut from Morant Bay. This party on their arrival took possession of that place, and of the chapel belonging to Paul Bogle. On this occasion an act of cruelty towards a woman has been charged against this party. As far, however, as the officer in command and his men were concerned, their acts appear to have been limited to this :—That they detained the woman during the day to act as cook for the troops, confining her to the spot by attaching a long cord to her wrist, the other end being fastened to the door of the building to prevent her escape. Whatever else may have been done to her was done before the troops arrived."

A striking contrast is here afforded to the coarse and wholesale accusations of cruelty which were afterwards heaped indiscriminately upon generals, officers, and men, for all acts of excess committed, or alleged to have been committed, as if the generals were responsible for everything done by the officers, and the officers for everything done by the men, with or without orders, or even contrary to orders; and as though the Governor was responsible for everything done by everybody, during the whole period of martial law. The Commissioners, on the contrary, were most careful to discriminate between acts done without authority, and acts done under orders, and also to distinguish whose the orders were; and they did the military commanders on the one hand, and the officers on the other, the justice of mentioning the precise

orders or instructions issued ; and further, it appears that all the orders given were orders of the *military commanders*, and that none were given by the *Governor*. Thus they stated :—

“After Lieutenant Adcock had reached Golden Grove, and visited the neighbouring estates that had been sacked, he ordered seven men to be tried by court-martial, six of whom were executed on the 24th of October. They were not executed until their trials had been reported to Brigadier Nelson at head-quarters, and the following despatch had been received in reply :—

“Memo.—Lieut. Adcock, A.D.C., commanding detachment, is hereby authorised to carry out the sentences awarded on the prisoners brought in.

“‘It is not desirable now to inflict capital punishment, *except on men actually found armed, or those who were ringleaders or murderers.*’

“The following general order was next issued by Brigadier-General Nelson on the 25th of October :—

“‘Officers commanding respectively must forbid any man to enter a house in or near his place under any pretext whatever, unless accompanied by a non-commissioned or a warrant officer. Any man found doing so to be handed over to the Provost-marshal for summary punishment.’

“A party of 25 men detached from the 1st West India Regiment were ordered by Brigadier-General Nelson on the 31st of October to be sent from Manchioneal to Golden Grove for permanent service ; and on the 2nd of November an officer proceeded from Morant Bay to take command of them, with the following orders given to him by Brigadier Nelson :—

“‘It will be necessary for you to exercise strict control over the men of your detachment, and not to permit any man to quit his quarters for the purpose of foraging.

“‘You are not sent to your post for the purpose of punishing the negro, but to maintain order, and to afford protection to the inhabitants generally. You are not authorised to inflict summary punishment. If any supposed rioter be sent as prisoner to you, be good enough to inquire into the case, and if you consider the same as of a serious nature, send him to my head-quarters with the evidence against him.

“‘You will doubtless have many prisoners brought before you, and some possibly through the animus of the inhabitants. Petty cases of larceny I cannot interfere with ; they must hereafter be dealt with the civil authority.

“‘I am quite aware you will be much pressed to administer punishment.

to supposed criminals, and you must be firm, temperate, and judicious in all communications with civilians.'

"At the time that the district of Plantain Garden River was occupied by the military, 13 persons belonging to the neighbouring villages were shot *without trial by parties of soldiers said to belong to the West India Regiment, others by parties of black soldiers*. During the course of the operations of which Morant Bay was the head-quarters, the evidence and returns relating to trials of prisoners show that 187 executions were carried out in that place.

Here it will be observed that the acts of excess were not only committed by parties of soldiers (*i.e., black soldiers, for the regiments mentioned are black regiments*) without orders of their officers, but that even had the officers given any such orders, they would have been *entirely contrary to the orders of the military commander*. So as to another detachment sent out, the mountainous district which included Stoney Gut, the seat of the stronghold of the insurgents, the head-quarters being a plantation which the rebels had attacked, Monklands, about sixteen miles from Morant Bay. The troops went on the 15th October, and the Commissioners stated:—

"During this week the troops made excursions down the valley to the neighbouring villages, where the insurgents were said to be collected.

"Colonel Hobbs reported on the 16th of October to Major-General O'Connor, 'that numbers of the rebels had come in, having thrown away their arms, seeking protection, and though worthy of death,' that he 'shrank from the responsibility of executing them, without first receiving the General's or Governor's wishes respecting them.'

"A despatch was sent the same day from the Major-General to Colonel Hobbs, which crossed on the road the despatch last mentioned, stating that '*Stoney Gut was said to be a hotbed of ruffians, and that it would be advisable if he looked it up.*'

"These instructions added, 'The Major-General would like you to be careful about burning villages, and not to do so without it is clear that the inhabitants have joined the insurgents. The Major-General *can give you no instructions, and leaves all to your own judgment.*' On the evening of the 18th Colonel Hobbs, then at Monklands, received orders to push on to Stoney Gut at once.

"On the 20th October he returned with his detachment to Monklands,

which was reached at night, and there he found instructions from Major-General O'Connor to make Monklands his head-quarters, and the Major-General expressed a hope that the Colonel would deal in a more summary manner with the rebels, and on no account to forward prisoners to Kingston. During this march through the valley, 11 prisoners found at Chigoe Foot Market on the morning of the 19th were tried and executed. *They were charged with having been engaged in the disturbances and murders at Morant Bay.* Colonel Hobbs reported these executions to Major-General O'Connor the same day, stating that the men 'were captured from the rebel camp,' and that 'finding their guilt clear, and being unable either to take or leave them, he had them shot.'

"The same evening, on his return to Chigoe Foot Market, a body of 50 prisoners was found there, 27 of whom were *selected as known rebels by a witness, who represented himself to have been pressed into their company by Paul Bogle.* The 27 were tried and convicted on the morning of the 20th at Chigoe Foot Market, and sentenced to death. They were carried on to Coley and Fonthill, two villages a short distance up the valley, to which they respectively belonged, and of 16 brought out for execution at Coley, 14 were shot, and two escaped. Nine others were shot, and then hung up inside a chapel at Fonthill, which had belonged to McLaren, one of the leaders of the insurgents.

"On the 21st of October Colonel Hobbs received a despatch from the Major-General, dated the day before, in which the General informs him as follows :—'I am much pleased by your adopting a decided course with regard to captured rebels ; the many you have sent into camp on mere suspicion of vague charges has caused some embarrassment. One of two courses seems to me, under martial law, to be the rule for your conduct ; if on careful investigation the captured persons are innocent, always giving them the advantage of a doubt, then release them ; but, if guilty, and taken red-handed, summary justice and execution of the sentence.' About 32 other executions took place in Monklands before the troops were withdrawn, all of which appear in the return of deaths. During the operations along the valley, about eight casual deaths *were inflicted by soldiers without authority*, on inhabitants in some of the villages.

"Some of these persons were shot in their houses, others while passing in the road, and two of the number were infirm persons, incapable of resistance. One of the two latter, however, suffered through a mistake. About 493 dwellings, situate in the various settlements of this district, were destroyed by fire during the same time."

Now here again the responsibility of commander, officers, and soldiers, is kept clear and distinct, and no one is considered liable for acts of excess, unless he either *did* them

or directed them. It will also be observed that the soldiers were black soldiers, and that most of the excesses were committed by them without orders, and only out of their own instincts and impulses, which could hardly have been expected to be so sanguinary and savage, even towards those of their own race and their own blood, so that the officers could scarcely be considered responsible, still less the military commander, who was at a distance; least of all the Governor, who was at the seat of Government. The only instance of any particular order given by the Governor, was in regard to one of the detachments, to the same effect as his general suggestion to the General, that the object should be to cut off and capture *the rebels* :—

“Operations for suppressing the outbreak were at the time carried on through the country on the north side of the island. On the 15th October Captain Hole marched from Port Antonio with 40 men of the 6th Regiment, and 60 men of the 1st West India Regiment under Ensign Cullen. Captain Hole received orders from Brigadier-General Nelson to proceed to Manchioneal about 20 miles eastward from Port Antonio, with directions ‘not to leave the line of march in search of rebels, nor to allow prisoners to be brought in except leaders of rebels; and that *those who were found with arms were to be shot.*’ Shortly afterwards, and before his departure, he got further orders from Governor Eyre, who directed him ‘to go off the road to meet *any body of the rebels* he heard of, and to engage and make examples of them.’”

That is to say—as is plainly implied by the terms used—any bodies of men joined in actual rebellion, or, as the General put it, found in arms. They were not by his orders to go merely in search of rebels, *i.e.*, scattered and dispersed; but if they heard of bodies of rebels *in force*, they were to go and engage them. There again, it will be observed how careful the Commissioners were to *discriminate* between the responsibilities of those concerned, while careful to notice any instance of excess or even of rash, though honest, exercise of martial law.

“Just as the troops under Captain Hole were leaving Port Antonio on the 15th, six or seven soldiers of the West India Regiment, *not* of the

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numbers attached to his force, galloped past, stating that they had been ordered to come on. Upon this they were told to go forward, and to join the advanced guard under Ensign Lewis. Upon their reaching the advanced guard they said that the Captain had ordered them to proceed to Long Bay, and they galloped forward, and were not seen again during the day. In consequence of an alarm given near Cog Hall of an expected attack by the insurgents, a skirmishing party was thrown forward, who shot two or three negroes. In the course of the day Captain Hole found 11 or 12 dead bodies lying near the road. *As these had not been shot by any of the troops under his command, it is supposed they must have fallen by the hands of the mounted soldiers of the West India Regiment who had ridden forward contrary to orders the day before.* A great quantity of pillaged property was also found during the march scattered along the road, and deposited in the adjacent cottages of the negroes. At Manchioneal, Courts-martial sat during 11 days from the 17th October to the 3rd November. Thirty-three prisoners were sentenced to death by these Courts and executed.

“During the time that the troops under Captain Hole were at Manchioneal, a detachment of the 1st West India Regiment was sent to a place in the district. The guides led them to another place, and three soldiers separated from the main body. They were absent some days, and on their return they brought with them two waggon loads of property recovered from the plunder taken by insurgents from the houses of Mr. Hire and Mr. Shortridge. These three soldiers reported to Captain Hole that during their absence they had shot 10 rebels, three of whom had been concerned in murdering Mr. Hire. On the 17th October a *black soldier* of the West India Regiment, who had deserted, was met on the road near Long Bay, going towards Port Antonio. He stopped three constables who were taking four prisoners under their charge. *The soldier took away the prisoners from these constables, and having placed them on the road at a convenient distance, he shot them in succession.* Later in the day a *soldier, being alone*, and supposed to be the same deserter, *shot six other prisoners* at a place near Manchioneal, in the presence of a head constable and some other persons. These 10 deaths are attended with such barbarity on the part of the soldier, and such cowardice on the part of the constables and other persons who witnessed what was done without interfering to prevent it, as to call for special notice and condemnation. There is ground for believing that this soldier may be identified.

“At Port Antonio 54 prisoners were tried by courts-martial, and suffered death during martial law. The deaths by casual shooting along the line of march amount to 25. In the villages of the district between Port Antonio and the country bordering on the Plain Garden River, 217 cottages were burnt.”

Here, again, it will be observed, that the instances of

excess, and the most atrocious that were disclosed, were acts committed by soldiers, not only *without* orders, but *contrary* to orders, and in the absence of their officers; and were moreover committed by *blacks* upon men of their own blood and race, and therefore were atrocities which no one could reasonably have supposed likely to take place. On the other hand, even a single instance of execution, by order of an officer, is recorded; as in one instance specially noticed by the Commissioners, that of a man named Donaldson, which they appear to have considered a hasty, though honest, exercise of martial law.

"Murray, a man not in custody, but believed to be one of those who murdered Mr. Hire, was proved, and was admitted by Donaldson, to have come to his house a few days before, having with him Mr. Hire's horse and saddle.

"Donaldson was called upon to give information of the place where Murray could be found, and of the time when he left him. This information Donaldson refused to give, and he was executed by order of Captain Hole for the offence of harbouring Murray.

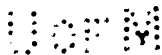
"Later on the march, a prisoner, who had been released by the insurgents from the Morant Bay Gaol, and who had been found with a cutlass and some stolen property, was brought in and shot; and another prisoner, in possession of a flask of powder, was afterwards shot at Long Bay."

The Commissioners mentioned that this officer most properly caused several soldiers whom he had detected in acts of excess to be punished.

In conclusion they stated:—

"This concludes our report of the military measures adopted for the suppression of the disturbances. It appears to us that the strategical positions taken up, the detachments posted in the disturbed districts and in the island generally, and the active co-operation of your Majesty's naval forces, produced a most beneficial effect; and by the prompt and rapid manner in which the different movements were executed, the outbreak was overcome in a very short period."

That is, the *outbreak* of the rebellion, not the *rebellion*, which is a very different thing, and the confusion of these things afterwards caused much injustice. The military measures (which, it will be observed, were deemed by the



Commissioners to include trials by court-martial), having thus been carefully examined in detail, the Commissioners proceeded to give the general results:—

“The total number of deaths caused by those engaged in the suppression amounted to 433, and the total number of dwellings burned to 1,000.

“With respect to the number of persons who were flogged, it is impossible to state it with any degree of accuracy: 60 appear to have been flogged by order of courts-martial; one woman was sentenced to be flogged at Morant Bay, but Colonel Nelson refused to confirm the sentence. The number flogged without a court-martial was much larger. The whole number subjected to the degrading punishment of martial law, we think, could not have been less than 600.”

The excesses in this respect, the Commissioners state, were to be ascribed, however, not to the military, but to the civil authorities. And only at one place, and under civil authority, was there anything like torture.

“The mode of inflicting the punishment at Bath calls for special notice. It was ordered by a local magistrate, after a very slight investigation, and frequently at the instance of book-keepers and others smarting under the sense of recent injury. At first an ordinary cat was used, but afterwards, for the punishment of men, wires were twisted with the cords.”

The Commissioners truly said it was painful to think of this, but it is pleasing to think that it occurred only at one place, and that it was wholly unauthorised by any military officer, and that it was the only instance of anything that can be fairly called deliberate cruelty, or the use of torture, which occurred during martial law. Likewise, it is to be observed, that it was done by men smarting under the sense of recent injury, and that in general, the punishment of flogging was never inflicted at all, except for the possession of plunder, or some act of injury.

The most important matter, of course, was the infliction of capital punishment. As to this the Commissioners said—

“We carefully examined into every case in which it was alleged that a life had been taken.”

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“Comment has already been made on cases of destruction of life which happened under exceptional circumstances. The conduct of the black soldier on the road between Manchioneal and Port Antonio caused the death of ten persons without any inquiry or proof of guilt. The excuse of dread of the soldier, made by those who witnessed his acts and might have interfered, cannot be allowed.”

The Commissioners stated that 354 persons had been executed under sentence of court-martial, and made particular comments on the courts-martial.

“Comments on the Courts-martial.”—The number of executions by order of courts-martial appeared to us so large that it became very important to ascertain, as far as we were able, the principles upon which the members constituting the Courts acted, and the sort of evidence upon which their decisions were pronounced.

“It would be *unreasonable to expect that in the circumstances under which these Courts were assembled there should be the same regularity and adherence to technical rules which we are accustomed to witness in our ordinary tribunals*; but there are certain great principles which ought under no circumstances to be violated, and there is an amount of evidence which every tribunal should require before it pronounces a judgment which shall affect the life, liberty, or person of any human being.

“In order to ascertain whether these principles have been adhered to, and whether in all cases this necessary evidence has been required, we have carefully read the notes of the evidence given before the different Courts, upon which notes the confirmations of the sentences were pronounced.

“*In the great majority of the cases the evidence seems to have been unobjectionable in character, and quite sufficient to justify the finding of the Court.* It is right also to state, that the account given by the more trustworthy witnesses as to the manner and deportment of the members of the Courts was decidedly favourable.

“But we think it right also to call attention to cases in which either the finding or the sentence was not justified by any evidence appearing on the face of the proceeding.”

They then mention some of these cases. In several cases depositions or confessions constituted the only evidence. In three cases besides that of Gordon, which made four, they reported—

“The evidence appears to us to have been wholly insufficient to sustain the findings.”

A fifth is afterwards mentioned, in which they said—

“The only offence charged or proved was the use of the following expression by a convict in one of the cells of the Kingston Gaol :—‘I have seen too much gun. Creoles are fools. If it [meaning the present rebellion] had been in Africa we would have known what to do immediately. If I had but five of my countrymen I would make you see something. *If I had a sword I would kill Mr. Shaw and Mr. Horton. The black man should rise like St. Domingo to take Jamaica from the Buckras.*’”

But they candidly added—

“The above observations are founded exclusively on the *proceedings themselves*, which were submitted for confirmation to the commanding officer, and on which it would appear that his confirmation of the sentence was founded.

“It is right, however, to make mention of the fact stated by some of the officers who appeared before us, that *other evidence than that which appears on the face of the proceedings was sometimes given*, and that the commanding officer was aware of such additional evidence having been given.

“We ought also to mention that in one of the cases above referred to, where the evidence upon which the prisoner was convicted appears most objectionable, the guilt of the prisoner was incidentally proved in the course of our inquiry.”

So that it by no means resulted from the statement of the Commissioners, that improper or insufficient evidence had been received—that, therefore, the parties were innocent, or not deserving of death ; on the contrary, they clearly imply that it did *not* necessarily follow, and in some cases they positively state that it was *not so*. Still less did it follow that the trials were not *honest*, and there is not a word in the report to imply that *in any one single instance* it was otherwise.

The general result of the report as regarded the infliction of death appeared to be this :—Total number of prisoners executed, 439 ; of these, 354 were executed by sentence of court-martial ; and of those, in the *great majority* of the cases—*i.e.* in all but some few specified—probably in 350 out of 354, “the evidence was unobjectionable in character and quite sufficient to justify the finding of the Court.” So

that in these cases, at all events, it may be fairly inferred that the men were worthy of death, and had actually taken part in the rebellion. And these are *nearly* all the deaths with which even the officers could be charged; for of the remaining 80 or 85 it will have been seen, upon the previous statement of the Commissioners, the greater number were killed by soldiers—almost always by *black* soldiers—not only *without* orders, but contrary to orders, and generally in the *absence* of officers. And of the few—if any—who were shot with the sanction of officers, either without trial or without being *taken* in arms or in the act, not a single instance is mentioned by the Commissioners in such terms as to convey the least idea of any want of honesty or ill-feeling, with the exception of one case they expressly reserved for further inquiry, and of another case—that of a summary execution by the Provost-marshal, which they declined to enter into, *because it was to be the subject of criminal prosecution*, clearly implying that in *no other* case did they suppose such a course could possibly be taken. Their language upon this case is most important for many reasons :—

“It will doubtless be observed that a great deal of evidence, laid before us with a view of proving the use of undue severity during the existence of martial law, has reference to the conduct of Mr. Gordon Ramsay, the Provost-marshal. *As he is now about to take his trial on a charge of murder for an act done by him while he held that office, it was not thought right by any of the parties concerned in the inquiry that he should be asked any questions, the answers to which, or a refusal to answer which, might prejudice him on his trial.* It will be obvious that for the same reason it would not be right for us to make any remarks upon his conduct. It is due to those under whom Mr. Ramsay acted to state that no complaints of the cruelties now charged against him, although stated to have been witnessed by many, were made to those who placed him in authority, and had the power, and undoubtedly would have had the will, to deprive him of that authority, if such cruelties had been shown to have been committed.”

It may, it is hoped, be safely inferred from this that had it occurred to the Commissioners as possible that the

Governor or military commander, or a member of any court-martial, could be tried for murder, for the execution of any one under sentence of court-martial, a similar course would have been followed, and a similar reserve adhered to. And it may unquestionably be assumed that it never occurred to the minds of the Commissioners that either the Governor or military commander would ever be charged with criminal responsibility for the act of the Provost-marshal, *done without their knowledge*, and not done in pursuance of any order or authority from either of them. With that exception, not a single instance of the infliction of *death* is mentioned by the Commissioners in terms implying any notion of serious moral culpability, or criminality on the part of the officers, though many such cases are mentioned as regarded the men.

As regard the military commanders, they mentioned no order given in terms of censure or reprobation. As regarded the Governor, a single order of his was mentioned, and that was merely to engage bodies of rebels.

Incidentally the report showed, as did despatches and documents, that the trials by court-martial took place entirely under military authority, and military responsibility; for they mentioned that in cases of prisoners sent into the declared district for trial, for seditious publications, prior to the rebellion, and not connected with it in any way; the general *on his own responsibility*, refused to try them.

The Commissioners, in expressing their general opinion, evidently considered that the Governor was only responsible for the maintenance of martial law, not for the execution, and they only conveyed a very guarded and moderate disapproval of its discontinuance, or rather its full exercise for the whole of the period. With that exception, they not only expressed no disapproval, but the strongest approval. They summed up their conclusions thus, as to the rebellion, and the necessity for martial law:—

“That the disturbances had their immediate origin in a planned resistance to lawful authority. That the causes leading to them were manifold ; but that the *principal* object was the obtaining of land free from payment of rent, and that some were animated by feelings of hostility towards political and personal opponents. while *not a few contemplated the attainment of their ends by the death or expulsion of the white inhabitants of the island.* That though the *original design* for the overthrow of authority was confined to a small portion of the forest, yet that the disorder spread with singular rapidity over an extensive tract of country ; and that such was the state of excitement prevailing in other parts of the island that, had more than a momentary success been obtained by the insurgents, their ultimate overthrow would have been attended with a still more fearful loss of property ; and that praise is due to Governor Eyre for the skill, promptitude, and vigour which he manifested during the early stages of the insurrection, to the exercise of which qualities its speedy termination is in a great degree to be attributed.”

But then they thought :—

“That by the *continuance* of martial law in its *full force* to the extreme limit of its statutory operation the people were deprived for a longer period than necessary of the great constitutional privileges by which the security of life and property is provided for.”

This, it will be seen, from the premises on which the report was founded, was the only part of the case for which the Governor could be responsible, and it was *entirely a matter of opinion* ; or of judgment, to be formed upon matters of opinion, at the moment ; and, therefore, as a difference of opinion, or error of judgment, is no ground for censure, the Commissioners put it in the most guarded way, not so much as a censure or condemnation, as a mere expression of opinion :—

“We have now narrated the means used for the suppression of the insurrection, and have commented on the conduct of some of those engaged in the suppression.

“The number of persons concerned in the original outbreak, and in the deeds of violence by which it was accompanied and followed, was undoubtedly large ; the number also of those who availed themselves of a time of disorder to plunder their neighbours was far larger ; but the punishments inflicted seem to us to have been far greater than the necessity required. Nor can we shut our eyes to the fact that among the suf-

ferers during the existence of martial law there were many who were neither directly or indirectly parties to the disturbances which it was the object of those placed in authority to suppress.

“We fear that this, to a certain extent, must even be the case when the ordinary laws, framed for the suppression of wrong-doing and the protection of the well-doer, are for a time suspended.

“The circumstances which are supposed to render necessary their suspension are almost sure to be such as to excite both fear and passion ; and some injustice, and we fear some cruelties, will be certain at such times to be perpetrated ; but we think that much which is now lamented might have been avoided if clear and precise instructions had been given for the regulation of the conduct of those who were engaged in the suppression ; and every officer had been made to understand that he would be held responsible for the slightest departure from these instructions. It does not seem reasonable to send officers upon a very difficult, and perfectly novel, service without any instructions, and to leave everything to their judgment.

“But as under any circumstances, however carefully instructions may be prepared, and however implicitly obeyed, the evils of martial law must be very great, we are driven to consider whether martial law might not have been terminated at an earlier period than the expiration of the thirty days allowed by the statute.

“We know how much easier it is to decide this question after than before the event, and we are aware, too, that sometimes the success of the measures adopted for the prevention of an evil deprive the authors of those measures of the evidence they would otherwise have had of their necessity.

“We have endeavoured, therefore, to place ourselves as far as possible in the position of the Governor and his advisers at the time their determination was arrived at. It was not till the 21st of October that the Maroons marched to Torrington, which evidently was the stronghold of the insurgents, and which place, from the marks of preparation found there, it had been intended to defend.

“After, however, firing a few shots, they fled at the approach of the Maroons, and on the following Monday, the 23rd, Paul Bogle was apprehended with his few remaining followers, and on the 24th was conveyed as a prisoner to Morant Bay.

“From this time it must have been clear to all that the rising in St. Thomas-in-the-East was put down, and that the only thing to be feared was simultaneous risings in other parts of the island. The question to be considered in deciding upon the conduct of the Government is, *not whether such risings were in fact likely to take place, but whether the Government, with the information then in their hands, had reasonable grounds for apprehending that they might take place.*

“It will be seen that they were receiving almost daily reports from

different parts of the island which must have led them to the conclusion that considerable danger of such risings existed. They could not at the time investigate, as we have, the grounds on which those reports rested.

“They were forwarded by the custodes of different parishes, in whom the Government was bound to place a certain amount of confidence ; and they would have incurred a serious responsibility if, with this information before them, they had thrown away the advantage of the terror which the very name of martial law is calculated to create in a population such as that which exists in this island.

“But there was a course which might have been pursued by which that advantage would have been secured, and yet many of the evils ordinarily attendant upon martial law avoided.

“On the 30th of October it was formally stated by the Governor that the wicked rebellion lately existing in certain parts of the county of Surrey had been subdued, and that the chief instigators thereof and transactors therein had been visited with the punishment due to their heinous offences, and that he was certified that the inhabitants of the districts lately in rebellion were desirous to return to their allegiance.

“From this day, at any rate, there could have been no necessity for that promptitude in the execution of the law which almost precluded a calm inquiry into each man's guilt or innocence. Directions might and ought to have been given that the sittings of courts-martial should be suspended, and the prisoners handed over to trial by the ordinary tribunals.”

This was the opinion of the Commissioners, of whom two out of three were lawyers, sitting on an inquiry some months after the rebellion had been put an end to, and arriving, upon mere inquiry, at a conclusion adverse to that formed at the time, by the Governor and his advisers, including not only the Commander-in-chief, but a military officer of experience sent round to examine into the state of the island. To test the weight or value of this opinion, let it be supposed that the Governor, contrary to the advice of the military commander, had terminated martial law earlier, and that then the rebellion had broken out again, where would his justification have been ? And would not the very men who now censure him for acting on the advice of the military commander have asked him what excuse he had for acting contrary to the advice of

those most competent to advise him? It has been seen that Lord Russell, at the very time at the head of the Government, had distinctly laid it down in the Ceylon case that, as to the circumstance of martial law, the governor could not do wrong if he acted in accordance with the advice of the military commanders—those best qualified to advise him. And in the present case a Royal Commission, —composed chiefly of lawyers—censured the Governor for having done the very thing which an eminent statesman had declared he ought to do; or rather, they did not censure him, but they laid the ground for a censure, by pronouncing a disapproval of the course he had taken.

This, however, was the *only* point on which there was any disapproval of the conduct of the Governor—keeping martial law in full force for the *whole* period of its duration. They thought—

“That by the continuance of martial law in its full force to the extreme limit of its statutory operation the people were deprived for a *longer than the necessary period* of the great constitutional privileges by which the security of life and property is provided for.”

It may indeed be questioned whether this involved any censure of the Governor, for even assuming that martial law was continued in full force longer than necessary (which would be a matter of military judgment, dependent upon military exigency), it did not follow that the full exercise of martial law during that period was a matter for which he was responsible. As already mentioned, the *execution* of martial law is a matter entirely for the military authorities, and under the control of the Commander-in-Chief, who, it will have been seen, exercised an independent control over it. At all events, therefore, the Governor could not be involved in the final conclusions of the report:—

“That the punishments inflicted were excessive.

“1. That the punishment of death was unnecessarily frequent.

"2. That the floggings were reckless, and at Bath positively barbarous.

"3. That the burning of 1,000 houses was wanton and cruel."

That it may not be supposed, that, in the few cases which the Commissioners thought open to exception, there was any reason to suppose the parties were innocent, it may be as well to give the only instances they furnish of sentences disproportionate to the finding :—

"In one of these cases, the *only* offence charged or proved was the use of the following expression by a convict, in one of the cells of the Kingston gaol :—'If it (meaning the present rebellion) had been in Africa, we would have known what to do immediately. If I had but five of my countrymen, I would make you see something. If I had a sword, I would kill, &c. The black men *ought to rise like St. Domingo, to take Jamaica from the bucras.*' It appears that one person was executed upon proof that he was advising the rioters on the 7th of October how to act, and that he resisted the police and assisted in handcuffing them on the 10th. Another, on proof that he had resisted the police on the 10th, having in his hand a cutlass and big stick, and that he made use of the following expression :—'You were taking my name down on Saturday ; now I can take my revenge. If we did not consider one thing, we would take your head off.'"

These were the only cases mentioned by the Commissioners in which the facts given in evidence were stated, and it will be seen they certainly do not show anything like innocence. In several cases where the Commissioners properly pointed out that the evidence was objectionable in point of character, as where persons were convicted only upon depositions or confessions, they say nothing as to the facts stated, or whether they had any real doubt of the guilt of the parties, or any real reason to believe them innocent. And it is most remarkable that, notwithstanding the extreme strictness of the investigations, they did not in any one single instance (except that of a woman shot by mistake) state that they had ascertained that a person executed was innocent. In four cases they stated they considered the evidence insufficient ; in several they state

the evidence was objectionable; they express a fear that some persons may have been executed who were not guilty of crimes; but, after the most careful and protracted investigation, they were not able to state that they had ascertained the innocence of a single individual.

And even putting together all the instances they except to, on account of insufficiency or impropriety of the evidence, they do not in point of number amount to more than a fractional proportion of those tried by court-martial—not more than ten or a dozen. So that out of 354 persons executed by court-martial, the Commissioners could not say that one was innocent, nor above four or five cases in which the evidence was insufficient, and about half-a-dozen more in which the evidence was improper in character. So that as of these they avow that some were guilty and others may have been, it is fair to infer that nearly all—probably 350 out of 354—were justly executed.

The Commissioners then went on to consider the trial of Gordon by court-martial, and to express their opinion upon it:—

“On Saturday the 14th October, Mr. Gordon left ‘Cherry Garden’ to pay a short visit at Kingston with his wife, intending to return home on the following Monday, the 16th.

“Amid the excitement in that town which arose on and after the 12th October, upon the confirmation of the account first received from Morant Bay, Mr. Gordon’s name was quickly associated with the authors of the disturbances. His friends and relations thereupon suggested to him on Monday the 16th to retire at once, but he positively refused, and remained where he was. On the following morning, having been sought for by the police without success, he went to the house of the Major-General commanding the troops to give himself up. There he was shortly after met by Governor Eyre and the Custos of Kingston, and by them arrested.

“From Kingston he was sent by sea to Morant Bay, where he was put on shore, a prisoner, on Friday evening, the 20th October.

“The next day a court-martial was sitting for trial of prisoners there, consisting partly of members of the legislature. Brigadier-General Nelson, however, having deemed it right that Mr. Gordon should not be tried by a court composed of persons who might be supposed to be influenced by local prejudices, adjourned that court, and another was convened, before

which, about two o'clock the same afternoon, Mr. Gordon was brought for trial.

"This court consisted of Lieutenant Brand, of Her Majesty's ship Onyx, president, Lieutenant Errington, R.N., and Ensign Kelly, 4th West India Regiment, members. The charges against the prisoner were for furthering the massacre at Morant Bay, and at divers periods previously inciting and advising with certain insurgents, and thereby by his influence tending to cause the riot.

"Two heads of offence were drawn up, one for High Treason, the other for complicity with certain parties engaged in the rebellion, riot, and insurrection at Morant Bay.

"One witness has stated that more than once during this trial, at the opening and during its progress, Mr. Gordon made application to postpone the trial on the ground of want of jurisdiction of the court to try him, and also on account of the absence of material witnesses for the defence.

"The witness, however, who deposes to this, seemed wholly unworthy of credit. Neither the person who independently reported the trial for publication at the time, nor the documents of the court recording the proceedings and particulars of the trial itself, make any mention of such an application, one of such importance as could hardly have escaped notice.

"Other persons present at the trial who heard all that passed there deny that any such application was made.

"After the case against the prisoner had closed, Mr. Gordon inquired for Dr. Major, who he said could prove that the state of his health had prevented him from attending the vestry meeting at Morant Bay on the 11th October.

"The Provost-marshal was sent from the court to look after the Doctor, and on returning shortly afterwards said to Mr. Gordon, 'Dr. Major is not in the Bay.' The witness Theodore Testard was then called by Mr. Gordon to prove the same fact, but he had no knowledge on the subject.

"Considering the importance then attached to Mr. Gordon's absence from the vestry on the 11th of October, it would have been much more satisfactory if some delay had been allowed in order that Dr. Major might have been sent for to speak to the state of his health on that day.

"The evidence taken consisted of documents and oral testimony. There were some depositions which would not be admissible according to the rules which regulate English courts, civil or military."

But that only amounted to this, that such evidence would not be admissible before a court of law or a regular court-martial, and the Commissioners did not remember that it had been held by a court of law, that all the regular rules of evidence do not bind even regular courts-martial,

but only such as are substantial. They themselves state that the question as to the courts-martial would be rather as what was substantial. Moreover, though they went on to state that two witnesses "were sworn and examined," they omitted to mention that these were the *two principal witnesses*, and that they expressly proved that Gordon had, in the presence of the leaders of the massacre, incited the negroes to kill the whites if they did not give up the back lands.

The Commissioners strictly scrutinised the nature of the evidence against Gordon, and the character of the trial. As regards the former, they were careful to point out the objection to depositions :—

"William Robertson Peart and James Fyfe Humber, whose joint statement was read, deposed to the matter spoken by Mr. Gordon at the Vere meeting in September. *Both of these persons were in Jamaica* at the time of the trial, and might have been summoned to give oral testimony. Charles Chevannes and George Thomas might also have been called as witnesses, as they were living in Jamaica."

But it was forgotten that they might be in Jamaica, and yet not available for a week ; and if the execution could be delayed a week, probably it would not have been justifiable at all. Many passages in the despatches show the difficulty of travelling in Jamaica.

"The written statements of these four persons had been taken in the absence of Mr. Gordon, and were inadmissible as proof against him, according to the rules that regulate evidence in English courts, civil or military."

"With regard to the written statements of J. Anderson, James Gordon, and E. Gough, they were not legal evidence ; but those persons were sworn and examined at the trial."

That is to say, their oral evidence was strictly and legally admissible ; and it would perhaps have been better had the Commissioners added that theirs was the principal evidence against the accused ; and better still

had they stated what it was; Anderson having stated that he had heard the prisoner say to some of the leaders of the insurgents that, if the whites did not give up the back lands, they must all die, and Gough having proved more recent communication between the prisoners and others, and his circulating, by means of their agency, an inflammatory address, telling the blacks to be up and doing. This was proved by strict legal evidence. The Commissioners did not advert to the nature of the evidence, and their chief statement would lead any one to suppose that the depositions of these three witnesses proved the evidence, whereas their evidence was first taken orally in the regular way, and then their depositions were read, to explain, to check, or confirm their oral evidence; according to the practice in our criminal courts—a practice found so conducive to justice, that, shortly before these events, an Act had been passed, called by the name of Mr. Denman, for the express purpose of facilitating it, and removing the difficulty arising from the objection in the case of depositions not taken in the presence of the accused, an objection substantial where the witnesses are not produced, and examined, but only formal where they are. That Act provided—

“That a witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the proceeding, . . . provided always that it shall be competent for the judge at any time during the trial to refuse the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he may think fit.” (Act to Amend the Law of Evidence, of May, 1865.)

That is, any statement of the witnesses rendered into writing, which would include a deposition, whether or not taken in the presence of the prisoner, which is only material when the witness is absent, so that the objection

taken by the Commissioners was entirely technical. The Commissioners went on to state :—

“ The printed placard headed ‘ State of the Island ’ is a duplicate of that which was *posted upon a tree, in August, at Morant Bay*, the original draft of which was proved to have been in the handwriting of Mr. Gordon.”

The effect of that placard, as already stated, was that the blacks should be up and doing, and should *act* as well as speak.

“ Five witnesses were sworn and examined for the prosecution and one on behalf of the prisoner.”

And then, having omitted all mention of the principal evidence against Gordon, they went on to state :—

“ The printed placard headed ‘ State of the Island ’ is a duplicate of that mentioned as posted upon a tree, in August, in Morant Bay, the original draft of which was found to have been in the handwriting of Mr. Gordon. The evidence, oral and documentary, appears to us to be wholly insufficient to establish the charge upon which the prisoner took his trial.”

That is,—that the prisoner had incited the insurgents to rise and murder the whites ; which was confirmed, not only by the irregular evidence, but by the terms of the placard circulated by means of the leading insurgents, and urging the blacks to be up and doing, and to *act* as well as speak. However, without in the least noticing *what the evidence was*, the Commissioners reported their *opinion* upon it thus :—

“ The evidence, oral and documentary, *appears to us* to be wholly insufficient to establish the *charge upon which the prisoner took his trial.*”

Upon which these observations naturally arise. In the first place, the finding was, if not altogether wholly irrelevant; at all events entirely inconclusive, as to the *material* question to be considered, viz., whether the *court-martial* might not honestly, and not unreasonably, have

considered the evidence sufficient? For it is well known that there is nothing upon which various minds so differ, as upon the effect of circumstantial evidence; and it is further obvious that in such a peculiar case the effect of it must a good deal depend upon its connection with other facts of a general nature, notorious and undoubted, and of which formal evidence could hardly be expected in an irregular trial under martial law; so that not only legally, but morally and substantially, the real question was, what the *court-martial* might not unreasonably believe; not what might appear to the Commissioners—chiefly lawyers, accustomed to conclusive evidence, and formal proof of everything—to be sufficient. The Commissioners, however, seem to have considered that they were sent to retry the case of Gordon, whereas what they had to inquire into was the conduct of those responsible for his trial and execution, a very different matter indeed, which would depend, not on *their* opinion of the evidence, so much as its natural effect on the minds of the parties responsible. And it is conceived that they were entitled to the judgment of the Commissioners upon the question whether the court might not have honestly deemed the evidence sufficient; as to which the Commissioners expressed no opinion, though it is manifest, from a close attention to the terms of their statement on the case, that if they had expressed such opinion, it would have been that the finding of the court was *justified*. This *necessarily follows* from the effect of the statements they make, though they refrained from stating it distinctly, and though the language they used would naturally lead the public to suppose they considered it not warranted by the evidence, and held the accused to be innocent. For they had already stated that the charges against the prisoner were for conducting to the massacre by inciting the insurgents, and using his influence with them, which tended to cause the outbreak; and then they stated that two charges were *drawn up*—one *high treason*, and the

other complicity in the massacre; upon which they represent the trial to have proceeded: and finally, they state that the evidence was insufficient to establish the charge *upon which he took his trial*: that is, the *formal* charge, as drawn up, viz., high treason, and actual complicity in the particular massacre. The Commissioners said, in effect, that the evidence was insufficient to establish *that*. Not that it was insufficient to establish the real substantial charge of having incited the insurgents to insurrection, and so of having caused it. This would be quite consistent with his not having designed the *particular* massacre, or a massacre on that *particular day and hour*. And it would also be consistent with the absence of evidence of an actual treasonable design, though, as the effect of a local rising, if successful, would be to cause a general rising, the result of which would be to exterminate the whites, and thus to deprive the Crown of the colony, such a design might be inferred. So that the insufficiency of the evidence to establish either of these charges could not by any means show its insufficiency to establish the *real* substantial charge, that of having incited to the insurrection. And it strangely escaped the notice of the Court that, as Gordon was tried under martial law, he was tried by *military* law, which makes it a capital offence to incite to sedition. And this omission of any notice of the real charge was the more remarkable and the more to be regretted because their *special* finding on the case clearly and conclusively showed that, in their view, Gordon had *incited the insurgents to insurrection*. They stated, however, as to the result of the trial, as follows:—

“He was found guilty, and sentenced to death, after six hours’ trial. After having approved and confirmed the finding and sentence, Brigadier Nelson forwarded the proceedings of the trial to General O’Connor, under cover of a despatch, dated 21st October, 8 p.m. In this despatch he states, for the information of the General, that he considered it his duty fully to approve the finding, and confirm the sentence; and adding, ‘Tomorrow being Sunday, and there existing no *military* reason why the

sentence should not be deferred, I have preferred to delay its execution till Monday morning next, at eight o'clock."

So that the Commander-in-chief, who, it will be borne in mind, as already has appeared from the despatches, was on bad terms with the Governor, concurred in the *necessity* as well as the justice of the execution, and, of course, its necessity for the suppression of the rebellion, the leaders being still at large, and the negroes still in armed rebellion.

The Commissioners italicised the word "military," which seems to have suggested that the meaning was that there was no military reason for the execution, and accordingly that was the ground taken on the prosecutions. But it is evident that the point was that there was no military reason why the execution should not be deferred *until the Monday*, and which, coupled with all the rest, and the approval of the military authorities, implied that at that time the execution *would* be required by military reasons: not, of course, on the grounds of such a present necessity as alone justifies a killing at common law, but on the ground of the general necessity for putting down a rebellion, by the terror inspired by the execution of the person believed to have been its author. At this time, it will be observed, the active leaders were at large and the negroes were still actually in arms, as the Commissioners had already stated.

The Commissioners did not set forth the letter of the military commander; which was most important with reference to the responsibility afterwards cast upon the Governor in relation to the case, as it showed distinctly that the trial took place entirely under the *military direction and authority*. Neither did they notice two most important pieces of evidence with respect to the case: one in a letter of General O'Connor to the Governor (contained in one of the earlier despatches), *directing his attention to the case of Gordon*, and suggesting that there was an important

piece of evidence against him (the inflammatory address already more than once alluded to); and the other in the evidence of Colonel Nelson, who states that Mr. Eyre, when he sent Gordon, desired that he—Colonel Nelson—as the military commander, would examine the evidence and see if there was sufficient to warrant the prisoner's trial; and if so, and if he considered it proper to do it, and not otherwise, then to place him on his trial. Taken by the light of the two most important pieces of evidence, the terms of the military commander's despatch to his superior officer, the Commander-in-chief, were doubly important. It ran thus:—

“After six hours' search into the documents connected with the case of Gordon, I found that I had sufficient evidence to warrant my directing his trial. I prepared a draft charge and pieces of evidence for the court. It assembled about two o'clock p.m. this day, and closed its proceedings after daylight. The President having transmitted them, I carefully perused them. The sentence was death. I considered it my duty fully to approve and confirm. I endorse the whole of the proceedings of the court for your information, as you may desire to see what evidence led to the conviction of so great a traitor. I have not furnished any report to his Excellency the Governor, because, as his Excellency is now at Kingston, I apprehend all my report should be made through you as my immediate commanding officer. Hoping to give you approval,” &c.

Now, the letter was most important, as conclusively showing that the trial was conducted by the military authorities entirely on their responsibility, without reference to the Governor, either as to the charge, the evidence, the finding, or the sentence, he being at a distance during the trial, and taking no part in the direction of the proceedings, nor having any report made to him of them. The Commissioners went on:—

“The whole proceedings of the court were enclosed for the General's information. They reached him on the 22nd, and he, after reading them to the members of the Executive Committee, sent them to Governor Eyre, with a request that he would return them as soon as possible. The proceedings were returned to the General the same day by Governor Eyre, who wrote at the same time that he fully concurred in the justice of the sen-

tence and the policy of carrying it into effect. On the same day he wrote to General Nelson, 'I quite concur in the justice of the sentence, and *the necessity for carrying it out.*'

"This letter reached Brigadier Nelson before the execution of Mr. Gordon.

"On the 23rd October Brigadier-General Nelson sent a despatch to Major-General O'Connor, announcing the execution of Mr. Gordon at 7.10 a.m. that morning.

"On the 24th October General O'Connor transmitted, in letters to the Secretary of State for War and to the Military Secretary at the Horse Guards, a copy of Brigadier-General Nelson's despatch reporting the trial, sentence, and execution of Mr. Gordon, and in both letters he adds, 'A copy of his Excellency the Governor's letter approving the same is enclosed, *in which I fully coincide.*'"

Here again the Commissioners omitted to mention, that General O'Connor afterwards stated that he *considered the case called for prompt and decided action.* (Minutes of Evidence, evidence of General O'Connor.) So that he not only concurred with the Governor as to the justice, but as to the *necessity* for the execution, and its immediate execution; which, indeed, was indicated by the tone of his letter to the Governor, sending the proceedings and desiring their instant return. It is the more to be regretted that the Commissioners omitted all mention of these important matters, since they went to the very root of the imputation afterwards cast upon the Governor with reference to this painful case.

However, even taking the case as stated by the Commissioners, it appeared that the Commander-in-chief of that day—an experienced military officer and an able military commander who acted under him, neither of them responsible to nor reporting to the Governor, but entirely independent of him, and reporting, not even to the Colonial Office, but to a different department of State—arrived at a clear conclusion that the evidence was sufficient to establish that Gordon was guilty of the crime of insurrection; that is, as the military officers evidently understood from their manner of stating the charge, guilty of inciting the insur-

gents to insurrection, and so guilty of the insurrection to which they were thus incited, and which well might be, although he had no actual complicity in the particular insurrection, in the sense of intending it on that *particular day and hour* ; and, when carefully considered, the finding of the Commissioners merely came to this, that he was not implicated in it in *that* sense, leaving his substantial guilt entirely unaffected. Whether this made the least imputation even upon the military commanders, still less upon the Governor, the reader must consider.

To recur to the general findings of the Commissioners : that the punishments inflicted were excessive, and especially that the punishment of death was unnecessarily frequent. These statements, it will be observed, are the *general* conclusions, and they are so general as to afford no guide as to the responsibility of particular parties, for which reference must be had to the particular statements of the Commissioners. And it was here that the gravest injustice was done to the Governor, who, it was supposed, was responsible for *everything done by everybody*, whereas, upon a close attention to the *particular* statements of the Commissioners, it will appear that he was responsible for *none* of the excesses.

In the first place, with reference to the most important matter, *capital* punishment, the Commissioners stated that—

“ The total number of deaths caused by those engaged in the suppression were 449 ; of those, 354 were tried by court-martial, and of these, in the *great majority of cases, the evidence was unobjectionable in character, and quite sufficient to justify the finding of the Court.*”

So that it is manifest that in the more serious sense—that is, in the sense of execution of persons probably or even possibly innocent—there were no excesses in the *trials*. This being so, the question naturally arises, in what sense, or upon what *data* the Commissioners used the

phrase—at all events as regarded *capital* punishment—that “the punishments were excessive,” and “that the infliction of death was too frequent?” They must have meant by this something different from the *continuance* of the trials and executions, for that had already been dealt with. The Report affords no grounds or *data* from which the sense in which they used the word “excessive” could be inferred, except, indeed, as to flogging, for which they gave intelligible reason; that it was inflicted recklessly. But there is no such statement as to capital trials and executions; on the contrary, there is a statement that in the majority of the cases the trials were satisfactory, which implies that the parties were guilty. It is, then, not to be supposed that they meant that the inflictions of capital punishment were excessive, in the sense that the persons were innocent, and it is to be presumed, therefore, that they meant that too many persons were executed who were *guilty*. It is to be lamented that they did not express themselves more clearly, for their expressions were popularly understood very differently; and it makes all the difference in the world in considering whether too many persons were executed; to consider whether they were innocent or guilty. The phrase “excessive punishment” itself strictly implies guilt rather than innocence; and so the phrase “too frequent infliction of capital punishment,” it is absurd to speak of the excessive or too frequent execution of the innocent. But the popular interpretations are not always accurate, and even in Parliament the Commissioners were supposed to have reported to the effect that reckless hanging went on irrespective of guilt or innocence; whereas when the statements of their report are closely scanned, they amount merely to this, that some guilty persons were executed by martial law who might have been executed by ordinary law. It is plain, at all events, that this is the only sense in which their Report would be consistent with the facts they state, and, therefore, they must be supposed

to have been their meaning, a very different meaning indeed from what was put upon it at the time.

It results from the Report that there were no serious excesses as regarded the great majority of the cases of capital punishment by sentence of courts-martial, comprising 354 out of 439, and the excesses under this head must be sought in the smaller portion of the total number, being the number of 80 or 85 summarily shot in the earlier part of the period of the duration of martial law—that is to say, in the first rage of pursuit, when, as has been seen, black soldiers shot many negroes, for the most part without orders, and in the absence of their officers, in one instance ten at a time. It is obvious that in this number the excesses must chiefly be found so far as regards *capital* punishments; and it is equally manifest that the Governor, who was not in the field, and gave no orders to commit such acts, could not be personally responsible, according to the statements of the Commissioners, since the atrocities took place generally in the *absence* of the officers. Thus, therefore, it is found that, as regards the excesses under the more important head, on the one hand, they are reduced to a comparatively small number as regards the whole, and the Governor and military commanders are *entirely*, and the officers to a great extent, released of all responsibility.

Nay, further, it will appear that, even as to the actual perpetrators of these excesses, they had at least the excuse that these sad excesses occurred during the first hot rage of pursuit, and under the excitement caused by actual massacre. For these excesses it was obvious the actual perpetrators alone could be liable.

In expressing an opinion that the executions were excessive and too frequent, it is to be inferred, therefore, either that the Commissioners chiefly alluded to the summary military executions which took place, for the most part, without orders or in the absence of officers, during the first hot rage of pursuit, or, if they alluded at all to

the executions during the latter portion of the period, which took place under court-martial, they must have meant, as they had already reported in effect, that, in almost all the cases the sentences were just, but that there was no necessity for anticipating the sentences of ordinary law : or, in other words, that the number of summary trials and capital sentences was greater than the degree of the danger rendered necessary, even assuming the guilt of the parties executed. The practical importance of this it is manifest is inconceivably diminished, when it is assumed, as the Commissioners seem to have assumed, that the men were, for the most part, justly executed ; and it never appears to have occurred to them that if, indeed, the men were guilty of participation in the rebellion, then the very number convicted showed the degree of the danger. But, apart from that, the question, it is manifest, as to the propriety or reasonable necessity for these executions, assuming their justice, would depend mainly upon the reasonableness of the view of the danger, and this again would depend upon the number of the insurgents, because upon that would depend the number still at large, who had neither surrendered nor been apprehended, and who were still in rebellion, though not in open rebellion. As to these considerations, of which it will be seen the Commissioners had taken no notice in their conclusions or expression of opinions, as to the continuance of martial law, they had stated in effect that some thousands had been entirely engaged in the insurrection, of whom it is manifest the greater number were still at large and had not surrendered, notwithstanding the amnesty, on which they mainly founded their opinion, but which only applied to those who surrendered. Much also must depend upon the general condition of the colony, and the general disposition of the black population ; and, as to this, there was a great deal of evidence adduced by the Governor before the Commissioners, which it will be seen they made allusion

to in their report, and of which the effect was stated by him in a letter to the Secretary of State which it is proper here to insert, as it reached the Secretary of State before the report, and was before him at the time he prepared his despatch, quoting the general conclusions of the Report, and grounding thereon his recall of the Governor. The letter was of this nature.

Mr. Eyre had laid before the Royal Commissioners an immense mass of documentary evidence, comprised of statements made to him as to the condition of the colony and the apprehensions entertained of a rebellion; but some parts were rejected as not being strictly legal evidence: and he embodied the result in a despatch to the Secretary of State, which is here inserted: because the question *as to his responsibility* for the measures taken must depend upon the *general belief*. He first gives general reasons for his belief as to the formidable character of the rebellion:—

“I have the honour to acknowledge the receipt of your various despatches relative to the late rebellion, asking for further information and explanations to enable her Majesty’s Government to understand the nature and extent of the outbreak, the state in which the other districts of the island were at the time, and the grounds for continuing martial law, and trials by military tribunals, after the rebellion had been got under control.

“In order to arrive at a just conclusion upon these points it is necessary to premise,

“First. That the negroes from a low state of civilisation and being under the influence of superstitious feelings, could not properly be dealt with in the same manner as might the peasantry of a European country.

“To produce any adequate effect upon such a population, numbering as they do some 350,000, as against about 13,000 whites who are scattered amongst them in isolated and unprotected positions, and widely separated from each other, it was of paramount importance that punishment for such serious offences as rebellion, arson, and murder should be prompt, certain, and severe. It could only be made so by the continuance of the military tribunals until all the parties captured as principals had their cases inquired into and dealt with summarily.

“It is true that within a week from the first outbreak the rebellion was got under control, but a large number of the instigators of and actors in it

*were still at large, scattered throughout an area of between 400 and 500 square miles of mountainous and woody country.**

“To have withdrawn martial law, and have substituted the delay and uncertainty of civil tribunals before the chief rebels were punished, would have done away with the impression which it was so necessary at the time to make upon the minds of the negroes throughout the island.

“Secondly. That as a race the negroes are most excitable and impulsive, and any seditious or rebellious action was sure to be taken up by and extend amongst the large majority of those with whom it came in contact. This was abundantly proved in St. Thomas-in-the-East, the wave of rebellion having extended from Morant Bay, twenty miles to the north west (between Arntully and Monklands) in two and a half days, and from Morant Bay, forty miles to the east, and north-east as far as Long Bay, in three and a half days ; at Monklands, seventeen miles (north-west) from Morant Bay, Mr. Patterson, Justice of the Peace, was obliged to fly for his life, and his place was plundered on the 14th October. At Mulatto River, thirty-five miles (north-east) from Morant Bay, Mr. Hinchelwood, Justice of the Peace, was obliged to fly for his life, and his house was burned on the 13th October.”

He gave reasons for difficulty as to *express proof* of the apprehensions entertained :—

“Thirdly. That as a race the negroes are most reticent, and it is very difficult to obtain from them full or specific information upon any subject ; hence it is almost impossible to arrive at anything like correct details of their plans or intentions. Even where they wish to give warning to persons they desire to save, it is usually done in an ambiguous manner. Thus about July last year (when the Government was expecting an outbreak near Black River), Dr. McCatty was warned by several persons to go away as ‘something was going to happen, that they were sure that nothing would trouble him, but Massa had better take nigger advice to go away.’ He could elicit no further information. The rising did not take place, because the Government was on its guard, and took precautions in time to prevent it. Other similar instances might be given. It will be easy to understand from this trait in the negro character, that a conspiracy may exist, and even have extensive ramifications, without the Government or any white individual being in any way aware of it.

“Fourthly. The negroes exercise a reign of terror over each other,

* No notice whatever is taken of this, the most important feature in the case ; at all events, no answer was ever afforded to it. It must be borne in mind that the Commissioners in their Report stated in effect that *some thousands* had been actively engaged in the rebellion, of whom the greater part were still at large.

which deters people from giving information of any intended outrage, or from assisting in any way to frustrate its perpetration.*

"The man Adam Smith, who gave information of the contemplated rising near Black River last August, has been poisoned, and Dr. McCatty certifies that he found large quantities of arsenic in his stomach and intestines.

"John Tranlayson, who gave information of illegal drilling in the Blue-fields district was beaten by his companions for doing so.

"Several black persons are stated to have been killed by the rebels during the late rebellion for having refused to join them against the whites.

"In many instances they were compelled to take oaths to join them under threats of having their heads cut off. This threat was also used to the police at Stoney Gut by Paul Bogle on the 10th October ; it was used to Thomas McCoy by Paul Bogle on the 11th October, and to many others at different times and places by him or by other rebels.

"Mr. Hinchelwood, Justice of the Peace, states that Edward Minot, beadle of St. Mary's Church, warned him to go away at once, stating, 'I hear those people will have your head, and though plenty of we negroes would help you, not one of we dare lift our hand for you.'

"Many other similar cases have come to my knowledge, and there is little doubt that such was and is the general feeling throughout the country, even amongst the best disposed negroes. There were several gratifying instances in which individual negroes showed fidelity to their employers, and aided in saving their persons and property, but there is none of their attempting to stop the progress of rebellion or to resist it ; and this fact, I think, shows plainly how very general was the feeling in favour of the rebellion : those who did not take an active part in promoting it, must either have sympathised with it, or at least have stood passively by without attempting to arrest its progress.

"Fifthly. Not only was the rebellion universal throughout St. Thomas-in-the-East (a parish which alone contain 215 square miles), and endeavouring to extend itself in the adjoining parishes of Portland, St. David's, and Port Royal, in all of which there were plenty of sympathisers ready to join at a moment's notice, but I had good reason to believe that disloyalty, disaffection, sedition, and rebellious intentions existed in almost every other parish in the island.

"Sixthly. The number of troops in the whole island was only 1000 ; of these about 500 were engaged in suppressing the rebellion, and occupying

* Evidence was given or offered on oath before the Commissioners of all or most of the particular matters here mentioned ; and though in some instances legal objection to evidence may have precluded actual proof of the facts, as *facts* there can be no doubt that the information was *received* and *believed*, and that is all that is material. But *most* of these things were *proved*.

the parishes of St. Thomas-in-the-East, Portland, St David's and part of Port Royal, upwards of 500 square miles in extent, with a population of fully 40,000.

"The other 500 troops were employed in garrisoning and protecting New Castle, Up Park Camp, and Kingston.

"Even when the additional troops arrived from Barbadoes and Nassau there were altogether only some 1700 to garrison and protect a country 140 miles long, and 50 broad, containing an area of between 6000 and 7000 square miles, much of which consists of mountain fastnesses or dense jungles with few facilities for intercommunication."

He avowed fully and freely the view he had formed as to the necessity for deterrent measures.

"Bearing all these circumstances in view, and considering the frightful and irretrievable ruin which must inevitably have overtaken the Colony if the rebellion had been allowed to gain head or to extend itself; I consider that I was fully justified in continuing martial law and trials by military tribunals, until all the principal instigators of or actors in the rebellion were dealt with, and the rebellion itself so crushed out as to deter any attempt at a similar outbreak elsewhere.

"The success which has attended my measures is in itself a justification of them, and to those who are inclined to cavil at their severity, I would say, that in such a case instant and just punishment became eventual mercy, the deserved death of the few saved the lives of the many. I would ask also what would have been thought or said of me had I lost the colony, or occasioned the massacre of thousands through any delay or hesitancy on my part to accept the responsibility which the emergency necessarily imposed upon me.

"From what has already been said, it will easily be understood that however strong was my own conviction of the universality of seditious and rebellious feelings throughout almost the entire island, it is far from being an easy matter to bring forward proof sufficient to produce a similar conviction in the minds of persons living at a distance, unacquainted with the country and the negro character, and unable to appreciate the value of all the little incidents or circumstances which to my mind indicated a great and eminent danger."

Mr. Eyre appealed to the authority of all the leading persons in the colony.*

* All of whom gave evidence before the Commissioners on oath, and testified to the effect here stated; that is, partly upon matters of fact, and partly upon information and belief formed upon all the circumstances within their observation. Many of them, from their nature, were not susceptible of actual legal proof.

"I cannot more clearly describe the nature and character of these circumstances and incidents than I did in a message to the House of Assembly, in which I informed them that 'the grounds upon which my opinion was based, consisted partly of oral information from gentlemen or others connected with the different districts, partly of information contained in private letters to the Governor, and in letters to the members of the Executive Committee or to other gentlemen of position, which were shown to the Governor, partly of representations from custodes or magistrates of the alarming state of their districts, of seditious and threatening language being openly indulged in, of threatening letters, of night meetings of the peasantry, of unsanctioned drilling being carried on in various places, of statements of the insecure and unprotected state of the parishes, of applications for troops, for men-of-war, for arms, for extra police or constables, for formation of volunteer corps, &c., &c. ; the whole tending to show that sedition and rebellious intentions were widespread through the land, and that in most of the parishes the residents who were best able to judge of the temper and feeling of the peasantry around them, were in a state of great apprehension and alarm.'"

Of course it must necessarily be more or less a matter of *opinion*, as *express proof* of a conspiracy could scarcely under such circumstances be obtained.

"It could not be expected that there should be *any documentary evidence amongst the negroes themselves* of a conspiracy to overthrow the Queen's authority, and to massacre the white and coloured people of the island, nor could it reasonably be supposed that people like the negroes should have established any very complete organisation, or have made any perfect arrangements to act in combination.

"But that there was a certain amount of organisation and combination, and an intention to act simultaneously, or nearly so, in many of the parishes, I cannot doubt ; nor do I doubt but that the object was to exterminate the white and coloured classes and obtain possession of the country for themselves. However wild and visionary such a scheme may appear to Englishmen, it must be borne in mind that the success which attended the Haytians against the French, and more recently of the St. Dominicans against the Spaniards, afforded examples and encouragement which, from the vicinity of those republics to Jamaica, were constantly before the peasantry of this country ; and these examples lost none of their force from the presence of many Haytians at Kingston living in wealth and idleness, and from the manner in which such examples were expatiated upon by designing demagogues and agitators, who, like G. W. Gordon, did not hesitate to tell the peasantry of this country that 'they should do as the Haytians had done.'"

Mr. Eyre went on to detail a mass of information in support of the opinion he had formed.

“There are many points connected with the late rebellion which have been greatly misrepresented or misunderstood in England.

“I have collected various reports, statements, or depositions from all parts of the country, from custodes, magistrates, inspectors of police, clergymen, and other persons of position, influence, and intelligence, as well as some statements or depositions from persons of humbler position. The whole constitute a mass of information of a most important and valuable character, and will well repay a careful and attentive perusal.

“They indicate the opinions arrived at by those most competent to form a just judgment with regard to recent events, and in many cases they exhibit the grounds or circumstance upon which those opinions are based. Taken separately and alone, each would be but the view of an individual, but read in connection with each other, these documents represent the feelings and convictions of the large majority of the respectable inhabitants of this colony, and possess a value and weight which cannot be ignored.

“They will fully remove the erroneous impressions which I have alluded to as having been entertained in England, and they will place before the British public many facts and circumstances not previously known, but having a powerful bearing upon the character of the rebellion, and the propriety of the steps taken to quell it and prevent further outbreaks.

“I have not had time to thoroughly examine, analyse, classify and report upon all the very voluminous documents now forwarded, or the many facts or incidents which they disclose, but I have endeavoured, as far as time has permitted, to put before you in the shape of extracts some of the more important passages in reference to points which are either greatly misunderstood, or imperfectly or not at all known.”

Mr. Eyre stated facts to show that though there was a *planned rebellion* (which the Commissioners had in effect reported), that its *outbreak* had been precipitated. He referred to documents showing this.

“As far as I am able to form an opinion, I believe the outbreak at Morant Bay to have been a premature development of an intention to rise which was much more general, and had a later period (supposed to be the then coming Christmas) fixed for its being carried into effect. The readiness with which it was taken up through an extensive tract of country, the sympathy and exultation openly displayed in other districts when the temporary success of the rebels was first made known, and the disappointment and sullenness exhibited, when later intelligence announced that the

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rising was suppressed, all indicate a state of preparedness for rebellion on the part of a large portion of the population of the island.

"But even in St. Thomas-in-the-East, premature as the outbreak is believed to have been, there is abundant proof that it did not arise out of the immediate circumstances of the moment, but was to a certain extent *premeditated and predetermined*.*

"Henry Theophilus Bogle, nephew of Paul Bogle, states that about two weeks before the rebellion, meetings were being held at Stoney Gut, and oaths administered, also that captains were appointed with about fifty men each.

"Julius Hebbert states that meetings were being held and oaths taken not to divulge the secrets heard.

"Policeman William Fuller states that on the 10th October, when trying to execute a warrant on Paul Bogle, at Stoney Gut, Captain Grant called out 'Men,' and immediately 300 came out from the cane piece and the chapel, armed with cutlasses, spikes, bayonets, knives, and sticks; that they insisted (under the alternative of taking off his head), upon his taking the oath because he was a black man, or as they stated it, 'skin for skin;' that Paul Bogle administered this oath on the Bible, that it was, 'So help me God, after this day I must cleave from the whites and cleave to the blacks;' that he saw the oath administered to several that joined Paul Bogle—the same oath.

"Rural constable Jonas Foster states, that on the 10th October, when trying to execute the warrant upon Paul Bogle at Stoney Gut, the latter cried out 'Men, help here, turn out, men;' that thereupon Captain Grant sounded the shell and the drum beat, and Captain Grant said, 'Troops, turn out;' that over 300 men came out of the cane piece and chapel, armed with cutlasses, sticks, and lances. That subsequently Colonel Bowie ordered the men to go out to drill, and that three gangs turned out with drums playing and shells blowing. That several men had the oath administered to them and were then given each a dram of rum and gunpowder to drink.

"On the morning of the 11th October, prior to the insurgents going to the parade (where the Court-house was) all the following circumstances took place:—Alexander Brown, a volunteer, states that being sent out to collect straggling volunteers, he was met by a mob of rebels, who cried out 'The volunteers have joined the buckra, kill them;' that he was attacked, knocked down senseless, and his wrist dislocated, before they went to the parade. Robert Evans Jones, boatswain of Morant Bay jail, but a policeman in charge of Morant Bay police station at the time of the disturbances, states that about two hundred rebels took possession of the police station,

* In substance, all this was amply supported by evidence on oath before the Commissioners, and indeed seems entirely in accordance with the statements of their Report.

taking down the guns and bayonets, beating and wounding him before they went to the parade.

“Dr. John S. Gerrard states, that prior to the mob appearing in the parade, a crashing noise was heard in the direction of the police station, accompanied by blowing of shells, and beating of drums, and that soon afterwards 300 or 400 people armed with sticks, bills, spikes, guns, and cutlasses, made their appearance at the street facing the Court-house, and that they approached nearer and nearer, howling defiance in reply to the inquiries of the custos as to what they wanted.”

Mr. Eyre referred to numerous enclosures containing statements tending to show predetermination, or the existence of design, organisation, or combination, or the tendency of the feeling prevalent amongst the black people.

“Charles McLean, clerk of the vestry, St. David's, states, that on Dr. Underhill's letter being read at the vestry Samuel Clark said, if the people did not get their rights there must be *bloodshed*, and they must fight for it. He remonstrated to the custos and said, ‘Really, your honour, this is treason.’ Again, when Clark attended the school at Yallahs he told the boys (almost all blacks) to persevere with their studies, for shortly the island would be theirs; nobody could keep it much longer from them. R. G. Harrison, sergeant of volunteers, states, he several times heard a man named McTarvish say that, ‘He would like to kill every Scotchman in the district, and that there would soon be a war in Jamaica against the white people.’ E. N. Harrison, sergeant-major of volunteers, heard McTarvish say, ‘He would like to destroy every Scotchman and overseer, but never mind, *war will soon be in Jamaica*.’

“The Honourable W. P. Georges, custos of St. David's, states, that two months before the outbreak he was threatened with a stick by a black man named Richard Gould, because he was not paid for work improperly performed, adding that if he did not get paid at that time he would very easily manage it soon.

“The Rev. J. Sloane, LL.B., island curate of St. Andrew's, Golden Grove, states, that the negroes were in the habit of stealing everything, that no trust could be placed in their most solemn asseverations. That in September, 1864, he was violently assaulted by a man and woman, when merely trying to induce them to leave his land, where they were not only trespassing but creating a great noise; he states that frequent meetings were held at nights up to two and three in the morning, that he heard beating of drums and a fife playing quite lively tunes from midnight for a couple of hours after, and that he thinks there were secret meetings for the purposes of drilling. He states that after the massacre the signal came from

Morant Bay and was understood by a certain party and a council of war called, that the time was one when the negroes could not be got together unless by previous concert, and yet *there were 800 negroes collected at Golden Grove, that they established a strategetic occupation of all the outlets from Plantain Garden river, stopping and questioning all persons attempting to pass.* The rebel leaders are also said to have exercised absolute control over the excited mob, and through their influence cane fields and sugar works were left uninjured that the negroes might have them for themselves.

“Plunder was carried off in large quantities, which they could not expect to enjoy unless through a successful rebellion. The blacks are stated to have had a feeling of confidence in each other and in their unity, under their war cry of ‘colour for colour.’

“T. Mitchell, inspector of police for Trelawney, reports that shortly before the rebellion illegal drilling was going on at Deeside in that parish. J. Palache, inspector of police for Manchester, states, people in this district were known to say ‘They would not buy land, for they should soon get it for nothing.’ Rev. Dr. Moore, LL.D., rector of St. Mary’s, believes that in many parishes the rebellion was systematically organised, and that others were more or less prepared. J. Sawkins, director of the geological survey, states, the late Baron Von Ketelholdt expressed to him after August last his fears that there would be a rising of the negroes in St. Thomas-in-the-East, and he adds his own opinion that rumours and acts since that period have justified a belief in some subtle movement amongst the negroes, that had for its object the destruction of the white population. J. Harrison, attorney of Hordley estate, states, he was informed by Mr. Henry Ford, of Kingston, that just before the rebellion the sale of gunpowder at his branch store at Bath had been unusual. Charles W. Kirkland states, that about two months before the rebellion negroes came into his shop at Manchioneal, and observed to him, ‘You won’t sell us the goods cheap now, but by-and-by we will take them for nothing.’ John Wilson states, John Swire informed him that their ‘warriors’ intended to kill him because he was Mr. Hire’s favourite; also that when asked ‘What are you going to do with the canes and estates?’ the same man replied, ‘All we will make sugar of it and share it amongst ourselves,’ adding, ‘we never mind about the ship.’ Joseph Rose states, a month before the rebellion Charles Farmer told me he had seen blood sprinkled at Belle Castle Chapel, Manchioneal, and that was a sign there was ‘going to be a row soon.’ Also, that a few days after the rebellion he heard John Pringle Afflick say, it was lucky for the whites the war broke out at Morant Bay, as they (the blacks) were waiting for Circuit Court at Bath, on 18th or 19th October, when all the white folks from Port Antonio side and Morant Bay side would be in Bath, and they would burn the Court-house and kill all the white and coloured people. It was the best place and time, as few buckras would be left at home. Also, that during the re-

bellion he heard David Fuller, a yellow-skin black man, say, 'They would kill all the buckras, there was plenty of black boy could read and write now and manage the estates, they would cut the canes and make sugar themselves, and get what they wanted by ships from England.'

"Also, that Mr. Reid, the saddler, informed him, in his capacity of constable, that William Troop, a black man of Grange Hill estate, said on the night of Mr. Hire's murder, 'Burn down the house, we don't want this house. Works house of use. I am order to take charge of Amity Hall (Mr. Hire's place), and cut the canes next week. We will find our own book-keeper, and you black nigger that don't join we when we done killing buckra we will kill you and make your wife and children slaves.'

"The Rev. J. Woollett, Roman Catholic priest, states, about June last I was at Pisgah, a large settlement of brown people principally. They told me they were afraid to plant as they had heard the black people intended to rise. Pisgah is high up in the hills where the parishes of Westmoreland, St. James's, Hauover, and St. Elizabeth meet. John M. Mais, book-keeper, of Golden Grove, states, that being ill when the rebels came to Golden Grove, he was unable in the first instance to escape, and when the people of Golden Grove destroyed the great house, he heard some of those who had come up from Morant Bay tell them to desist, as well as to leave everything untouched, saying that the house and contents were wanted for General Paul Bogle. They immediately left. Mr. Mais subsequently escaped through the woods to the sea.

"William Coley, a deserter from the 1st West India Regiment, deposes that since the rebellion, Archibald McLeish, of Roses Valley, and Joey Davy, of Evergreen district (both in St. Elizabeth), have been and are still in the habit of holding night meetings, from 6 p.m. to 6 a.m., at the house of William Chambers, where Joe Davy kept guard; they asked me if I was a soldier, and whether I would join and drill them. I refused, on which they threatened to report me. I reclined outside the house, and heard William Chambers say they must make haste and get powder and guns, and those that had no guns must bring matchetts, that they must go down and burn Mr. Coke's house at Oxford, and shoot him. They agreed to commence the first day of Christmas.

"Samuel C. Stines, in charge of a store in the parish of St. Elizabeth, states, that in August and September last the negroes repeatedly observed, 'We are not going to buy goods now, we will soon get them for nothing; you stop and see if we don't.'

"On another occasion, a negro told a coloured man in the same store that 'All the coloured and white people's days would soon be over, they should not rule the country any longer.'

"Rev. A Findlay, island curate in the parish of St. Andrew's, states his conviction that there was an improper organization made for the overthrow of the Government, and that it existed in many minds, but had not the power of becoming sufficiently developed to secure its success; that there are some persons in his own district who were aware beforehand of the

coming outbreak, and are always inclined for mischief and disaffection, and that such persons may be found more or less all over Jamaica. Mr. Findlay states several circumstances indicating the disposition and tone of thinking of the black people, all clearly evidencing that in the event of a disturbance (which they expected), even the best of them would not do more than remain passive ; none would fight against their own colour, or attempt to prevent the inevitable revolution, which was at times regarded as all but accomplished.

“ Dr. Lawson, senior magistrate of St. James’s, gives several instances of persons being punished for using seditious or rebellious language, and of intentions and attempts to burn down property in Montego Bay.

“ W. Fletcher, inspector of police for Clarendon and Vere, reports that about the time of the outbreak in St. Thomas-in-the-East an attempt was made to burn down the Court-house at Chapeltown, by the aid of Kerosine oil ; he also gives instances of black people being heard to say they would ‘soon be free, and that the lands would soon be divided ;’ that the ‘people of Clarendon ought to break out,’ and the speaker ‘knew whose head would first be taken off.’ He speaks also of the general assertion and belief in the parish that ‘an intended slaughter of the whites and coloured inhabitants of the island was to have been carried out on Christmas Eve.’

“ Rev. D. B. Panton, island curate of St. George’s, states, ‘The outbreak (at St. Thomas-in-the-East) was local, but the seditious spirit was general. The germs of sedition were to be found in every parish, but more especially in those parishes most frequently visited by the late G. W. Gordon. There were districts in each parish where no seditious spirit existed, but such is the want of moral stamina in the negro character, that had the tide of rebellion flowed in his neighbourhood, he must inevitably have gone with the stream, although in his heart cursing the seditious movement.’

“ Rev. H. Isaacs, island curate in St. Andrew’s, bears the same testimony as to the tendency of the black population to go with the stream.

“ Rev. C. B. Chandler, island curate in St. Ann’s, gives an instance in which Mr. Gyles, proprietor of the ‘Recess estate,’ in St. Thomas-in-the-Vale, upon refusing to rent out to the negroes some of his lands which they wanted, was coolly told, ‘Mr. Gyles, you won’t rent us your land now, but let me tell you the time is soon coming when we will take it before your face, and won’t ask your leave, and you won’t be able to help yourself.’

“ Mr. James Stewart, attorney for Agualta Vale, in Metcalfe, gives instances in which parties used seditious or threatening language in his district. In one a man named Thomas Campbell said, ‘If the rebels had come to this parish he would have joined them in cutting off Mr. Hosack’s and Mr. Prendergast’s heads.’ In another, a man threatened Mr. Swire, and other gentlemen, that ‘they could go on; they were only over them until Christmas.’

“ The Hon. S. Mais, custos of the parish of Port Royal, states, that

constant nightly meetings were held, and that there was an unmistakeable insolence of manner amongst the negroes.

"Mr. H. F. Mackay, a planter of Bath, states, that early in the morning after the massacre two black men stopped him and asked where he was going, and upon his asking what is that to you, they remarked, 'Never mind, my boy, we'll soon have you,' and on his asking what they meant, they observed, 'Don't you hear there is a row at Morant Bay; as soon as the fellows come up this side to meet us we will know where to find you.' Bath is fourteen miles from Morant Bay. Mr. Mackay states, that on his return to Bath in the afternoon he found an immense crowd of 1,500 to 2,000 people collecting from the different negro settlements.

"Thomas Girvan, an engineer at Plantain Garden River estate, states, that on the forenoon of the 12th October, the labourers on the estate were surrounding the grindstone in noisy groups grinding their cutlasses, and were using very threatening language to the manager and book-keepers. Plantain Garden River is twenty-one miles from Morant Bay.

"Mr. Alexander Chisholm, manager of Golden Grove estate, states, that about June last there was a great gathering of all the labourers from the neighbouring estates at a Baptist meeting-house at Stoakes Hall; that he went there, but could not get near enough to hear what was said inside, but that a black man named Morris Brooks said to him, 'We will soon turn buckra ourselves;' others used threatening language, and he was compelled to ride away.

"It is very clear from the evidence of many of the managers, book-keepers, or others, that the labourers in the neighbourhood of Bath (fourteen miles from Morant Bay), and of Plantain Garden River (twenty-one miles from Morant Bay) were quite aware early on the morning of the 12th October of what had been going on at Morant Bay the previous evening, although the managers, book-keepers, and others, were themselves quite ignorant of anything having taken place."

Mr. Eyre referred to enclosures containing further statements tending to show that disaffection, a bad spirit, or evil intentions were general and widespread, or that anticipations of trouble or apprehensions of danger were very generally entertained.*

* It is to be borne in mind that most of this was verified on oath before the Commissioners, so far as it *could* be, according to the strict rules of legal evidence; and it may be observed that the Commissioners only admitted evidence of particular matters known to Mr. Eyre at the time, which was surely laying down too strict a rule, because, if his judgment was disputed, he had a right to give any evidence to show that it was *right*.

“Beckford Davis, clerk of the peace, St. George’s, states that the black people in that parish openly expressed themselves in the market-place and elsewhere as being ready to join the rebels if they came, and to destroy the whites. G. B. Smith, justice of the peace, states, that he was informed by a respectable black man that he was not safe at Green Wall estate, on the borders of St. David, that the ‘White Horses’ people were quite ready to join Paul Bogle.’

“Rev. J. Hildebrand, island curate in Manchester, states, that he has personal knowledge of rumours of intended risings amongst the negroes having been in general circulation in his parish for a long time; that St. Elizabeth, Westmoreland, and St. James’s, were specified as the places where the risings were to take place; and that prior to August last, a black man from St. Elizabeth brought his two daughters to the mountains of Manchester and left them there, stating as his reason that there was going to be a great row in his own district, and he wanted them out of the way. Mr. Hildebrand also states that illegal drilling was extensively carried on in a part of the parish of Manchester. J. A. Lord, late inspector of police for St. Thomas-in-the-East, states, that on the morning of the 13th, the road between Fair Prospect and Port Antonio was lined with negroes, evidently awaiting the signal for the outbreak, that within a few hours after pillage and burning actually commenced, and the rebels sent messages to Port Antonio that they were coming there on the 14th. Being delayed, however, at Manchioneal and Mulatto River plundering and destroying property, the troops were enabled to arrive at Port Antonio early on the 15th, and thus defeated their plan.

“Rev. J. Cork, rector of Westmoreland, states, that at Mesopotamia estate (nearly in the centre of Westmoreland) a coolie was asked, ‘If he heard that war had begun against buckra, that it would be sure to spread, and that the negroes desired to know on which side the coolies would fight.’ Coolies were located in considerable numbers at St. George’s Plain estate, in the neighbourhood, and the same question was put to them. Again, directly after the news of the insurrection reached Porter’s district, in the same parish, there was great excitement amongst the negroes, who began to sharpen their cutlasses and old bayonets, but as precautionary measures were at once taken, they had no opportunity of carrying out their evident evil designs.

“A Mr. Grierson was riding home from Savanna-la-Mar and met a party of negroes riding abreast and occupying the whole road. They would not make room for him to pass, and jeered him as he took to the trench. There was then a military and naval force at hand, but Mr. Grierson was afraid to take any steps to punish such obstruction.

“A black man from Hanover selling provisions at Town Head Market took a drink with his companion (also a Hanover man) at the shop of Mr. J. Buckner, his toast being ‘He hoped every mulatto man and buckra in the country would soon be governed by nigger.’ After

the insurrection broke out a man named David Barham went into Buckner's shop, was exceedingly insolent, and said, 'If he stopped there until night he would make every damned mulatto in the quarter smell hell' (a favourite expression of the negro).

"Rev. Charles Magnan, stipendiary curate in Westmoreland, states, two men in the King's part of this district said they wanted Jamaica to become like Hayti, and if the rebels only came that way they would join them; and two young women, daughters of a respectable brown person, were told by two men whom they met when walking out, that their heads would be cut off at Christmas.

"H. Prendergast, justice of the peace of St. George's, asked the people (after the August holidays) why they did not turn out to work, and was informed they were 'waiting for the new law.'

"Mr. Shaw states that a similar expression was used in Metcalfe, only there it was stated that a band of people were coming round by way of St. Thomas-in-the-East with a new law to compel the planters to give 2s. or 3s. per day wages.

"Mr. Shaw further states, as an indication of the feeling existing, that when the news of the outbreak reached the district a rural constable at once repaired to Annotto Bay and gave up his badge and baton.

"Rev. H. Browne, rector of Metcalfe, who was in Port Antonio at the time of the outbreak, states that he believes none would have been left alive in that town on the night of Sunday, the 15th October, had the 'Wolverine' not arrived that morning with troops.

"Rev. Mr. Hime, island curate of St. George's, states that amongst the labourers of the estates of Lawlayton and Spring Garden a general feeling was evidenced in favour of the rebels in St. Thomas-in-the-East, and that he has little doubt if the opportunity had offered they would have joined them.

"The Hon. L. Mackinnon, custos of Vere, states that his parish was the very powder magazine of sedition, and that it was only by sending down daily to notify to the black people the examples being made in St. Thomas-in-the-East that they were kept quiet until a detachment of troops could be obtained; that he was warned by a respectable old black man to take precautions, and that the head man at Pusey Hall openly avowed his desire to seize the arms of the police and begin the row in Vere.

"Mr. Mackinnon asserts his full belief that the people would have risen if an opportunity had been afforded.

"Rev. T. Orgill, island curate of Portland, expresses his opinion that the intention to rebel was general, based upon the facts that the insurrection travelled 40 miles in two days, the readiness with which the insurgents were joined in their progress, and the easy conversion of multitudes hitherto peaceable into insatiable robbers and even murderers when their victims could be overtaken.

"The Hon. B. Vickers, custos of Westmoreland, states that consider-

able excitement and disaffection was openly manifested in the Blue Fields district, threats were made to fire the town at Savanna-la-Mar if a certain case about to be tried was not decided as the blacks wished. Mr. Trench, who was to defend the obnoxious party, had his life threatened, and the lawyers and many others attended the court armed with revolvers. Considerable disaffection was also manifested in the neighbourhood of Lamb's river. In the Darleston district considerable disaffection prevailed, and a large number of old muskets and other firearms had recently been repaired by the black people. Mr. Vickers expresses his opinion that a repetition of the scene enacted at Morant Bay Court-house was only averted by the presence of military and ships of war.

"J. Patterson, justice of the peace of Monklands, states that the people in the upper part of the parish of St. David's were all ready to join in the rebellion.

"Mr. W. Miller, justice of the peace, states that the blacks held courts of their own in the interior district of Manchioneal and in the Blue Mountain Valley district, and punished offences by money fine.

"D. P. Trench, inspector of revenues, states that the impression is universal that the outbreak at Morant Bay was precipitate, and thereby prevented a general insurrection and wholesale murder of the white and some of the higher class of the coloured inhabitants.

"Douglas Johnson states that the Rebels reached Monkland (seventeen miles from Morant Bay) on the evening following the massacre. They were armed with guns, swords, and cutlasses : a man named Gordon acted as clerk, and put down the names of those who were compelled to join them. They plundered the store at Monklands.

"Richard Ogilvie states he was tied and handcuffed and carried before Paul Bogle, who held a court at Mount Lebanon chapel. Hearing that the soldiers were at Monklands, Paul Bogle blew his horn and called up his men to fight the soldiers.

"Eliza Ford states that at Monklands the rebels compelled Mrs. Patterson to kneel down and swear that her husband and another man had not been engaged in cutting slugs to meet the rebels ; also that many men were compelled to join the rebels under threat of having their heads cut off.

"Thomas Higgins states, Minot said, 'If I had men to sanction me, as Gordon had, Jamaica would either be worse or better ; I hear the war is in Browns Town, just the right place it ought to be.'

"Rev. D. Morris, rector of St. James's, states, the sense of insecurity in Montego Bay before the arrival of the naval and military protection was of a general complexion. If the insurrection could have presented a successful front for even a very few days, it is impossible to say how frightful might have been the consequences. There seemed to be a disposition to speak of the affair as a 'war' rather than an insurrection.

"Rev. S. R. Ward, American missionary, reports that S. Clarke, in

speaking of the rebellion, said, 'Everybody, sir, seems to be in it.' He adds, that from Morant Bay they separated in several distinct bands with the single purpose of carrying out their fiendish designs east, west, and north of Morant Bay, and that they ceased not to murder, plunder, and destroy until the iron hand of the military was laid heavily upon them. Mr. Ward is himself an educated black man.

"The Hon. S. Rennals, custos of St. Thomas-in-the-Vale, reports that three or four instances occurred in his parish in which parties were convicted of using seditious language, such as, 'They were waiting for the rebels to come, and they would join and fight.' A man in Metcalfe, where he also had property, threatened to burn it down and attack himself (the custos) after having disposed of some others. Several anonymous and threatening letters were also found.

"Mr. Stewart, inspector of police for St. Mary's, St. George's, and Metcalfe, expresses his belief that the greatest disaffection and inclination to resist the laws on every occasion prevails all over the island.

"Rev. C. Douet, island curate of Bath, states his belief that the spirit of sedition was general before the outbreak, and that this is proved by simultaneous risings in Bath, Manchioneal, &c., &c.

"The Hon. R. Nunes, custos of Trelawney, states, it does not admit of a doubt that the unfortunate outbreak of 11th October was a premature development of a premeditated and organised arrangement, and that the original intention was not to limit the insurrection to the parish of St. Thomas-in-the-East.

"Captain Kent, R.N., stipendiary justice, Port Royal district, states that several months before the insurrection he openly expressed his expectations of some fearful doings.

"T. Hart, inspector of police for St. Ann's, reports that when the rebellion became known, the people of the Western district of St. Ann's were very much excited, and troops had to be sent. Mr. Hart further states that several people in St. Ann's were anxiously awaiting the result of the outbreak in order to encourage a rebellious spirit in that parish.

"J. Harrison, attorney of Hordley, states that the Plantain Garden River rebels were a distinct lot from the Morant Bay ones.

"A. Nairne, inspector of police for Kingston, reports that the seditious spirit of the rebellion, had it not been crushed out, would have assumed a general character. He had reason to suppose that disaffection and seditious feelings extended to other parishes besides St. Thomas-in-the-East.

"Rev. J. Downie, acting rector of St. John's, states, that during the three years he has been in Jamaica he has constantly noticed with surprise the very insolent and defiant bearing of a portion of the black population, a bearing the very reverse of that attributed to them in England; he states his firm conviction that the spirit of disaffection was not confined to St. Thomas-in-the-East.

“ E. N. Harrison, sergeant-major of volunteers, states that the Plantain Garden River district, Duckenfield, and Golden Grove were plundered chiefly by their own negroes and those living near.

“ The Hon. C. Royes, custos of St. Ann's, states that rumours of seditious language and threats were plentiful, but only in one instance could he trace them to an authentic source. Many of the negroes hoped the rebellion would not come there, but none said it should not.

“ Rev. C. Hall, rector of Clarendon, states there was only one indication in his parish of an insubordinate spirit, an attempt to set fire to the Court-house. He considers none but those who live at a distance safe from danger could term the rebellion a local riot.

“ T. Mitchell, inspector of police for Trelawney, states that shortly after the outbreak at Morant Bay a spirit of disaffection appeared in his parish ; one man said if he had twelve like himself he would go on a certain day into the shops and cut off the heads of every white man in Falmouth ; another said the rebels from Morant Bay would soon be at Hampshire, and he would shoot all the white men about that district.

“ Charles McLean, clerk of the vestry, St. David's, states that ill-feeling and dissatisfaction on the part of the labouring classes was daily increasing ; decisions of courts of law were held in no respect ; proclamations and messages from the Queen were treated with contempt and called lies—red lies.

“ James Sullivan, a labourer, states that on 12th October a man named Chrystie, in St. David's, said publicly, ‘ I hear they kill the Baron at Morant Bay, and I am going to sharpen my cutlass back and belly, and go down there.’

“ The Hon. J. Hollingsworth, custos of Manchester, reports the arrival on the 28th December, of nine prisoners charged with conspiracy to commit murders and arson. They were brought in by the Maroons under magisterial warrants.

“ P. Harrison, senior magistrate of St. Dorothy's, reports that on the 13th December eleven men were brought before the justices for illegal drilling, and were committed for trial.

“ C. Brown, assistant geological surveyor, states that whilst engaged on the survey of St. Elizabeth in May, June, and July last, he could not help noticing a spirit of disaffection was abroad. At Ginger Hill no amount of money would induce anyone to act as a guide to him. Mr. Brown states that the 1st August was fixed by the negroes for an outbreak, and that he has not the slightest doubt an extensive revolt was planned. The steps taken by the Government at the time frustrated this. Mr. Brown entertains no doubt the seditious spirit was general and widespread.

“ Sir W. Fitzherbert's son states that at Blue Mountain estate, seven miles from Morant Bay, on going out early in the morning he saw six negroes grinding their cutlasses, and soon afterwards others. Before he could get his breakfast the rebels were upon him, and cut down his book-keeper by his side ; he himself narrowly escaped. In answer to a remark

that he was a stranger in the country, the blacks said they did not know one buckra from another, and would kill all. Mr. Fitzherbert was of opinion the outbreak began sooner than it was meant to do; he had heard that all the parishes were to begin together on the 26th December.

"Rev. J. Williamis, rector of Spanish Town, and acting archdeacon of Middlesex, after labouring for thirty years, during which he has had much experience amongst the blacks, says that, 'As a body there is little they desire so much as the complete possession of the country, and that you could not find one in a hundred that would not put forth his hand to effect his object if it could be done safely—that is, without detection—by the destruction of the white man, because they regard him as an oppressor, inasmuch as he is in possession of what they imagine belongs to themselves by right, and by the secret will of the Queen and people of England.

" 'I believe the seditious feeling to be so prevalent among them that opportunity alone was lacking the other day to have brought about a general massacre of the whites; and that to the prompt and decisive measures (which a section of the English press terms sanguinary and merciless) of the Governor and of those who acted with him and under him, we owe it that the lives of the white men throughout the island were not sacrificed, and their wives and daughters not violated.'

"Rev. A. Davidson, rector of Hanover, firmly believes that a seditious spirit and great disaffection towards the white population has been and still is everywhere prevalent; he believes that the spirit of rebellion has been general amongst the black population throughout the island. He bases his opinion on the general demeanour of the blacks at the time the rebellion broke out; on threatening letters which have been written; and on declarations made by blacks themselves that should a rising take place in the parish they would join in it too.

"J. F. Danvers, who was just appointed sub-agent for immigration a little while before the rebellion broke out, states that from his travels (in October) through St. Ann's, Trelawney, and St. James's, he can safely say that the bad feeling was not confined to St. Thomas-in-the-East alone. He heard that the negroes intended destroying the coloured population as well as the whites, with the intention of having the colony to themselves.

"J. Patterson, justice of the peace, proprietor of Monklands, states, that for a considerable time prior to the rebellion the blacks were sulky, impertinent, and unwilling to work. Meetings had been held in all the negro settlements for a long time before the outbreak. Believes that the people in the upper part of St. David's, and in his own parish, are quite ready to join in another rebellion, should a fit opportunity offer.

"D. Ewart, stipendiary justice, thinks there was a preconceived insurrectionary organisation, which Bogle and his followers carried into effect by riot, plunder, and blood, on the 11th October, and three days after.

"Rev. Bassett Key, island curate in St. Elizabeth's, is strongly convinced that the whole negro population were and are in a disaffected and rebellious state. He refers to the capture of several men near Keynsham for holding

meetings whereat schemes of murder and plunder were canvassed and agreed on. He reports that persons have been heard to say that the troops would soon be gone, and then those who brought them should get what they wanted; and that had not the arrests mentioned been made, it was the intention of the seditiously disposed to have cut off communication between the camp and the rest of the district by destroying the bridges.

"Many members of Mr. Key's own church, who are communicants, live in the districts where the meetings have been held, and must, he says, have known of them, but not one had come forward to tell. The 'old time' negroes express a very bad opinion of the present generation. Mr. Key speaks of the extreme ferocity of the negro character, and gives several instances of brutal cruelty to their children. When riding out to Stewart Town, in Trelawney, in December last, Mr. Key overtook six black men in the dark, marching two and two, with very bright sharp cutlasses and little bundles strapped between their shoulders, evidently not returning from labour."

"In Montego Bay he was informed by a clergyman that before the troops arrived, persons were heard about the streets saying, 'Six black birds to one white pigeon.' 'You are the smoke; wait till the fire comes.'"

"Mr. J. Harvey, attorney for Colonel Dawkins's estates in Vere, states that a servant girl in his employ heard a man in Vere say, in reference to the chopping or cutting up the white men in St. Thomas-in-the-East, 'So we want (or would do) to do with them down here.'"

"R. Buchanan, acting stipendiary justice, St. James's, is of opinion that the outbreak at Morant Bay was part of a predetermined and deliberate movement, prematurely developed, and that a general revolt was intended at a later and not distant period. Threatening and warning letters were received in the district; acts of arson also occurred in St. James's, and seditious and threatening language was uttered in the presence of a crowd and elsewhere. Instances are given of both. Mr. Buchanan believes the spirit of disaffection still to exist, and be only kept under by the presence of the troops."

"Rev. H. Scotland, island curate, St. John's, reports, that a respectable black man, a shoemaker, living near him, but until lately resident in St. Thomas-in-the-East, where he married, informed him, *before the outbreak*, that the people of St. Thomas-in-the-East were remarkably well off; rich in land, canes, pigs, horses, and even cattle, but were a very lawless set of people; at various times he recounted several acts of savagery committed by some of them upon the persons or property of the higher classes there, and on one occasion, when returning some newspapers lent by Mr. Scotland, containing an account of the accidental burning of Lyssons great house, in St. Thomas-in-the-East, he remarked, 'Well, sir, I see those people have burned down Lyssons great house. They are a wicked set of people up there; they have made up their minds to burn down every great house in the parish; I know they have, sir; a bad set of people: that's a reason, for one, why I came away; I could not live among such a set of people.'"

"Rev. J. Stone, M.A., rector of St. Elizabeth's, believes that the spirit

of disturbance was general; that numbers in every parish were ready, not only to join in the rebellion, but who would have induced the better disposed to join them too. Notices also the very insolent conduct of the blacks, especially the young men. Has heard that inflammatory speeches were made on various occasions.

“W. Downer, inspector of police, St. Andrew’s, believes the rebellion was prematurely developed, and that it was an organised insurrection, in progress of formation, at least throughout the entire county of Surrey, if not the whole island; has been of opinion for two years past that something of the kind was in progress. Considers the people in St. David’s, Port Royal, and St. Andrew’s were ready for revolt. In 10 days 18 persons were taken up in his district for seditious and threatening language, and in almost every instance were convicted and punished. Soon after the outbreak first became known, on 14th October, a respectable white man put a civil question to a black man named Thompson, who was passing with his companions, when Thompson turned round and poured upon him a volley of the most disgusting abuse, and wound up with these words, ‘You damned white-livered son of a bitch, you don’t know what is being done to windward. You won’t take warning; never mind, my boy, it is coming here, and you’ll all smell hell.’ This was said near the police station, in the hearing of 20 or 30 negroes, who received it with shouts of approval.

“The following day a man was brought in taken in the act of urging the people at Molyne’s estate to join him in rising at once and killing all the white men, saying that if only five of them would join him, he would make them do such things that Morant Bay would be fun to it. The other blacks only refused to join him because they said ‘Buckra is too strong for us down here.’

“That a rebellion was contemplated Mr. Downer feels satisfied, from the insolence and insubordinate conduct of the people. On one occasion, some time before the outbreak, when a man had been turned out of the police station for misconduct, he went round to the front of the inspector’s office, and shaking his finger at him said, ‘This is your day, but my day will soon come; then look out.’

“Mr. Downer mentions that a Mr. Pearson, a subordinate officer in the commissariat, whilst crossing the Kingston harbour in a boat some three weeks before the outbreak, was informed by the boatmen there was going to be a rebellion, and warned to take care of himself.

“As a proof that the rising at Morant Bay was not merely local, Mr. Downer states that within three days the whole population of the parish was in arms; that one band was in full operation in the work of destruction at Monklands; another at Bath; another in the Plantain Garden River district, and another at Manchioneal, proceeding onwards and threatening Port Antonio. Mr. Downer also gives the depositions of Charles Oakley that on the 9th October at a meeting at Stoney Gut, Paul Bogle and others made the arrangements for meeting at Morant Bay on

Wednesday, the 11th, as the time was come for them, and all who had guns or cutlasses were to bring them.

"B. Davis, clerk of the peace, St. George's, states, that in that district persons openly expressed themselves in the market-place as ready to join the rebels if they came, and destroy the whites. He says no one in St. George's questions the fact that the blacks of the parish were ripe for revolt, or doubts that a spirit of disaffection existed and still exists in other parishes.

"D. P. Trench, inspector of revenues, states, the gang who attacked Amity Hall and murdered Mr. Hire, came from the Bath district, co-operating with the people of Plantain Garden River, Mrs. Major, wife of Dr. Major, who lived in the top house on the 'Rhine' (Gordon's estate), told him that about 8 o'clock on the evening of the 12th October, she saw a 'flambeau' held out of a window at the bottom house on the 'Rhine' (occupied by Laurence, Gordon's overseer), and some time after this signal a large number of rebels gathered on the spot. Mrs. Major had no doubt these were the same people who murdered Mr. Hire, and pillaged Amity Hall between ten and eleven the same evening, as she heard the gang as they started from the Rhine openly and loudly declare that they would have Mr. Hire's head that night.

"After the murder the rebels prevented a faithful servant from burying Mr. Hire's body, stating, they had orders from 'head-quarters' to dig a hole and throw the body in, which they did. Mr. Trench adds, that from all he has seen or heard, he cannot doubt that the suddenness and readiness with which the entire black population of the parish betook themselves from their daily avocations, and co-operated together in the barbarous work of murder, plunder, and arson, they were instigated by the pressure of obligations deliberately entered into, and predetermined by a consideration which assigned to every rebel section their particular line of action in the bloody work. The Bishop of Kingston gives an instance of his own servant having heard of a conspiracy to destroy all the whites at Christmas, but who was unable to obtain any details, not being trusted apparently by those engaged in or knowing of it.

"Captain Kent, stipendiary justice, Port Royal district, states, there is not a doubt on my mind that an organised movement was to take place at Christmas, when all were assembled in their churches on that sacred day, and that not a white man was to be spared.

"Rev. S. R. Ward, American mission, states, that Samuel Clarke spoke to him of 'the haste and impatience of the rebels, and that as in the Baptist churches all wished to preach, so it was among them,' and that from this he gathered that Clarke knew Bogle, and his associates acted before the time.

"Rev. D. Morris, rector of St. James's, states, that he heard of one or two cases in which threats had been held out to individuals, or arrangements postponed with a reference to Christmas or the new year.

"James Wilson, book-keeper on Golden Grove estate, states, that two or

three days before the rebellion broke out, having occasion to speak to Edward McTavish, the head cane-hole digger, about bad work, he was very abusive and said, 'Wait a bit, you mulatto fellow, your time is soon coming: Christmas will do for you, I will then let you know what I can do with you at Christmas; if I don't shoot you, Wilson, the devil shoot me.' The same man soon after the outbreak subsequently chopped Wilson with his cutlass.

"John Brown deposes, that John Pringle Afflick, a rebel leader, on being taken into custody, stated 'He did not expect to break out then, as it was to be the second day of Christmas when they were to break out.

"Diana Blackwood, the faithful negro woman who saved the ladies of Hordley estate by hiding them, deposes that the rebels said 'they must kill all the buckra; Christmas time was the time, but as they broke out at Morant Bay yesterday already, they must have buckra life and have the estate, and be "buckra" and "book-keepers" themselves.'

"Hon. J. Hollingsworth, custos of Manchester, bears testimony to the defiant and insolent demeanour of the young men and women, indicating general disaffection through the island, and considers but for the premature outbreak, a scene of carnage would have ensued frightful to contemplate.

"Dr. Moore, LL.D., rector of St. Mary's, bears very similar testimony.

"J. Palache, inspector of police for Manchester, reports that a black man, named Chambers, told two magistrates and himself that had they been at Morant Bay, they should have been shot or served the same as Mr. Price.

"Mr. Gilbert Shaw confirms Inspector Stewart's statement, that Mr. R. Swire, in passing through the estate works, was informed by the negroes, 'You can go, but by this and Christmas your white cap will turn red,' referring, as he supposes, to bloodshed.

"T. Mitchell, inspector of police for Trelawney, states that people in his parish were punished for threatening their employers, that 'the 25th December will soon be here, and then you may look out,' and another person for declaring that 'on the 25th December he would burn down Deeside cottage.'

"Charles McLean, clerk of the vestry, St. David's, mentions that emissaries from St. Thomas-in-the-East (Benjamin Campbell particularly) had been amongst the people, asking 'if they did not know the good work had commenced at Morant Bay, and if they were not going to begin.' The families leaving the parish were jeered and laughed at, 'Ah, you are going, you will never come back, we must have our rights.'"

Mr. Eyre specially noticed the illegal administration of secret oaths as a strong proof of a conspiracy:—

"I have already adduced several instances of the administration of unlawful oaths, binding persons to join the blacks against the whites, and thus clearly showing combination and conspiracy.

“George Fuller Osborne, senior sergeant of police, gives similar testimony, that he was made by Paul Bogle to take the oath at Stoney Gut on Tuesday, the 10th October.

“John Spence gives evidence that two weeks before the rebellion Joseph Robinson, Alexander Taylor, Edward Gordon, and McLaren asked him to attend a meeting at McLaren’s house at night, that plenty of people from Dumfries, Nutt’s River, and other places, all black men attended ; that oaths were then administered by McLaren on a Bible, and all who refused to join were thrust outside. Spence was asked to take the oath, but refused ; he was informed by Alexander Taylor that the meaning of the oath was, ‘They wanted back lands to work without paying rent, and they were to kill the buckra.’

“Francis Gordon deposes that about three weeks before the rebellion he saw oaths administered to persons by McLaren at his house at Church Corner.

“H. Guscott, senior magistrate of St. George’s, states, that intercommunication was taking place between the St. Thomas-in-the-East people and those of St. George’s. That a man named Francis Stewart, from St. Thomas-in-the-East, was engaged in St. George’s in making a list of names and making collections, and that he invited persons to return with him to attend meetings at St. Thomas-in-the-East. Francis Stewart was subsequently taken at St. Thomas-in-the-East and hung for being actively engaged in the rebellion, so was a man from the St. George’s parish, no doubt one of those whom Stewart had induced to accompany him.”

He noticed also the evidence of secret meetings and other proof of lawless designs :—

“Mr. A. Mudie, schoolmaster and organist of Morant Bay, states, that for some weeks prior to the outbreak he had noticed gatherings of young men from Staunton estate, Nutt’s River, and Dumfries, who were on their way to Stoney Gut chapel ; also that persons from Thornton and Wood Hall were in the habit of visiting these meetings. Sometimes the meetings were held at Nutt’s River negro houses.

“Colonel A. Fyfe gives a list of names of persons who on the Saturday before the ‘murder day’ were, according to the testimony of John White, marched down by a man named Cameron to meet Paul Bogle at Stoney Gut, and then, on the Wednesday, Paul Bogle and Cameron with their respective gangs met at Stanton cross roads.

“Colonel Whitfield, in a letter dated 20th November, states his belief that a seditious and disloyal spirit pervades the entire Island, that a considerable amount of intercommunication has been and is taking place between the disaffected in the different parishes, for he observes men of sullen and dissatisfied looks riding about the country in all directions. He also stated his opinion that in all probability the negroes would rise if it were not for the presence of the military.

"The Hon. J. Hollingsworth forwards the depositions taken against nine persons for conspiring to commit murder and arson in the parish of St. Elizabeth.

"Mr. D. P. Trench, inspector of revenues, reports, that he was credibly informed that the Rev. E. Hewitt, Baptist minister at Mount Carey, St. James, upon being asked (about July or August last year) by the custos of that parish, if the black population in his district were peaceable, replied, 'I can answer for my own people, but there are 5,000 disaffected people in the parish who are ripe for rebellion if they had only a leader.'

With regard to the *black people having expressed an intention to exterminate all the whites and brown people*, there is, said Mr. Eyre, *abundant testimony*, and this he proceeded to adduce.

"Mrs. Herschel heard the rebels, at Potosi, say that they were going to kill all the white men, but were not going to hurt the white ladies, but reserve them for themselves.

"R. Kirkland, justice of the peace, heard the rebels at Bath state 'they would cut the throat of any white and coloured man they found; that every white man's throat must be cut, but the estates and women saved.'

"Mr. Harrison, of Hordley, heard the rebels say, 'One white devil is dead, give it them all, don't spare one;' again, 'We will rip up the women and children, as we can't get the men;' again, 'Mind the back door, don't let one of the damned women go, we will rip them up this night;' again, 'The women must have gone to the trash house, we will burn it down and roast them all up;' again, after breaking into the liquor store and drinking, 'Never mind de buckra women and pickinny, we get dem by-and-by when we want them.'

"John Brown, head man at Hordley, whilst hid in a tree saw the rebels searching for the ladies and children, and heard them swearing, 'If they catch the smallest pickinny they would kill it, as buckra must all die this time.'

"Diana Blackwood, who hid the ladies and children at Hordley, heard the rebels say, after going to the liquor store, 'We don't want the buckra women, we can get them when we like, and know what to do with them.'

"William Lake deposes that the rebels informed him 'that they were going to the Bay to kill all the white, brown, and black that will not join them, but those of the browns and blacks that will join them they will not kill.'

"The Hon. John Salmon, President of Privy and Legislative Council, states, that in St. Elizabeth's, a black man whom he did not even know, expressed his intention 'to cut off his head' as one of the first in that district.

“Dr. Moore, rector of St. Mary’s, reports that a black man in that district said, ‘The throats of all the whites should be cut.’

“Mr. Hart, inspector of police for St. Ann’s, learnt that in many of the villages the people said, ‘The white inhabitants must be destroyed.’

“Julius Hebbert deposes that on the night of the massacre the rebels ‘came up with swords and guns, some of them covered with blood. They said they had killed the white people, and would kill them all down to the last Sambo.’

“Mrs. * * * * * heard the rebels cry, ‘Jamaica is done for ever, we will lay every white man on the ground, among them the Governor.’ She was entirely stripped, and only escaped with her life because some one pointed out she was a handsome woman, and asked the man who was threatening her, ‘Don’t you want a wife?’

“A Miss * * * appears, according to the evidence of Isaac Taylor, to have been brutally treated, and it is probable that his evidence does not disclose the worst.

“Dr. Major states it was admitted that ‘orders were given by the leaders to kill all the males, and save all the females, as they would take them for themselves.’

“The Hon. P. Georges deposes that, whilst wounded and lying concealed, he heard the rebels declare, that not a white man nor brown man should be alive at Christmas.

“Thomas Bunting, storekeeper at Manchioneal, heard the rebels in front of his store ‘stating that the whites and coloured will all soon be got rid of.’ Ten inhabitants of Manchioneal deposed that they heard the rebels say, ‘They would destroy the white and coloured classes and take possession of their estates and other property.’

“T. L. Byles deposes that Goldson of Kingston, at the Underhill meeting in Spanish Town, declared that, ‘the time was fast coming when every white person’s throat would be cut.’”

Mr. Eyre made some general observations on the immense mass of evidence:—

“Such is the general tenor of the documentary evidence now submitted. I attach the entire letters or depositions from which the extracts are made, and many others which I have not the time to include in my hurried analysis. All the documents are deserving of a most attentive perusal in full, and will throw much light upon the character and tone of thinking of the negro population. It must not be forgotten that many of these papers are written by men who have spent a lifetime in the West Indies, and whose avocation and daily duties have necessarily made them intimately acquainted with all the characteristics of the negro race. Many are from earnest and zealous ministers of religion, whose lives have been devoted to an endeavour to improve and elevate the blacks as a people, with what

result let the documents now sent and those formerly transmitted in my several despatches relative to Dr. Underhill's letter testify."

Mr. Eyre then went on to refer to the numerous mis-statements and gross exaggerations which had been circulated with respect to alleged excesses:—

"There are some few general points to which I must more particularly refer, as they have been greatly misrepresented in England.

"Very incorrect statements have been circulated in reference to the number of executions and the total destruction of life generally. Sir Leopold M'Clintock, in an official report to the Admiralty, says, 'at least 800 were shot, chiefly by the Maroons, and 1,500 would probably be a moderate estimate of the total loss of life.'

"In my despatch No. 334* of the 23rd December, 1865, I transmitted a return by Colonel Fyfe, commanding the Maroons,* and showing that only 25 had been shot by them, of whom nine were killed in a skirmish.

"I, at the same time, enclosed a statement of Sir Leopold M'Clintock, in which that officer himself frankly admits, in answer to inquiries put to him as to the data upon which his opinions were based, that they were founded upon no other or better information than newspaper paragraphs, common rumour, or the statements of officers who had been to Morant Bay, but whose names, or opportunities of acquiring correct information, or whether they were serving ashore or afloat, he does not state.

"Other persons have stated that 2,050 were killed, and I am informed, that the streets of London were placarded with '3,000 negroes executed, eight miles of dead bodies.' Such statements are almost too ridiculous to be noticed, only that they produce a very mischievous effect upon the minds of persons at a distance from the scene, wholly unacquainted with the true character of the events which have been transpiring, and uninformed as to any actual details. It must always be a difficult matter to judge with any degree of accuracy as to the number of persons shot in the bush in putting down a serious and widespread rebellion, and in most cases this estimate will be greatly exaggerated, the very officers themselves who are engaged in the service unwittingly help to create an exaggerated impression. A single instance will illustrate this.

"In a report dated 15th October, addressed to Major General O'Connor, Col. Hobbs states as an absolute fact, 'We have, however, killed between fifteen or twenty of them at extraordinary long distances.'

"Having been called upon for further information and details, Colonel Hobbs reports to Major-General O'Connor on the 29th December, 'The

* This the Commissioners afterwards reported. Vide *ante*.

fifteen or twenty supposed to be shot were armed rebels whom we surprised in the chapel, in the act of administering the oath, they got away across a deep ravine, and were running up a lean hillside towards an earth-work with a flag flying, *when the advanced guard fired a volley, they said they killed from ten to twenty, distance about 800 yards. No one crossed the ravine to count them.* Thus it appears that the report of fifteen or twenty deaths rests upon the mere supposition of the common soldiers who constituted the advanced guard, and thought they killed that number. But there is no proof that even one was killed. Black people trying to escape along or over a hill (which, if like the rest of Jamaica hills, would be more or less covered with bush or jungle) may readily disappear or seem to drop without being in reality shot, when fired at from a much less distance than 800 yards.

"This instance will show how uncertain are even official reports of killed, when the dead bodies are not actually seen and counted, which is rarely if ever the case."

Mr. Eyre gave a general estimate of the total number of deaths, which turned out to be much over the real number, and stated distinctly his reasons for thinking it not excessive:—

"I have myself no means of judging of the probable number killed, but in talking over the matter with Colonel Elkington, an experienced officer, through whom the military reports were received, I understood his opinion to be that 500 would be the very maximum, and of these 251 are shown by the returns to have been executed under sentences of courts-martial.* Nor do I think that this amount of life can be considered as excessive, considering all the circumstances of the case; the extent of country through which the rebellion spread; the numerical amount of population within it; the fact that a large portion of this population was actively engaged in plundering, burning, and murdering, as far as they had opportunity of doing so, whilst none attempted to stay or resist the progress of the rebellion; the smallness of the means at the disposal of the Government to hold the district which was in rebellion, and at the same time afford protection to many other distant and widely separated districts where outbreaks were considered to be imminent, and the *consequent imperative necessity of making such an example of the insurgents of St. Thomas-in-the-East, as should strike terror, and thereby deter the black population from attempting to raise the standard of rebellion in other districts.*

* It turned out that on the most careful investigation it was ascertained by the Commissioners that the total number of deaths inflicted was 439, of which 354 were by sentence of court-martial.

"I appended a map showing the positions occupied by the military and the marches of the troops, and the Maroons, through the country (the former in red, the latter in blue lines).

"From this it will be seen that the *entire country* to the east of a line between Kingston on the south coast, and Annotto Bay on the north, *containing between 700 and 800 square miles*, was occupied and traversed by troops or Maroons.

"That some acts of wrong and injustice should be committed, and that in some cases the innocent may have suffered with the guilty, are incidents inseparable from the military occupation of a country in open rebellion; they could neither be foreseen nor prevented; they can only be lamented. Nor are such occurrences fairly chargeable against the authorities directing the general movements and policy, but necessarily unable to know the nature of or control all the subordinate details throughout such an extensive tract of country."

Mr. Eyre frankly and firmly avowed his responsibility for the measures he had really sanctioned.

"For the general policy pursued; for the occupation of particular points by troops; for all the principal movements of such troops; for the proclamation of martial law, and the continuance of military tribunals until its termination; for the arrest and removal to Morant Bay of Mr. Gordon; and for not interposing to stay the execution of his sentence when condemned, I, and I alone, am responsible. *I firmly believe* all the steps taken to have been necessary for the public safety; and this was the consideration which, above all others, it was my duty to think of first and chiefly.

"Any other or less decided course would, I feel convinced, *have led to further outbreaks in other parishes, to a repetition of the atrocities perpetrated at Morant Bay, and to a consequent increased severity of eventual punishment to the insurgents.*"

Mr. Eyre appealed with confidence to the universal opinion of the whole inhabitants of the colony.

"That the steps taken were, under God's good providence, the means of averting from Jamaica the horrors of a general rebellion, and that they saved the lives and properties of Her Majesty's subjects confided to my care, is not my opinion only, but the opinion of the large majority of the intelligent and reflecting portion of the community; and this opinion has been plainly, fully, and deliberately expressed by the two branches of the legislature in their legislative capacities, as well as by the ministers of the Church of England, of the Roman Catholic Church, and of the dissenting denominations, by the custodes, magistrates, and vestrymen of parishes,

by planters, professional men, and artisans, and by the ladies and women of the colony as a body ; in the numerous and eloquent addresses expressing gratitude and thanks with which I have been honoured.

“Surely those resident in the island, many of whom have spent a lifetime in it, of all classes, religions, and politics, possessing a knowledge of the country, and intimately acquainted with the character of the people, are, and ought to be, the best judges of the imminency of the peril from which they have escaped, and of the necessity for adopting the steps which were taken to avert it.

“Nor could a stronger proof be given of the full conviction of the colonists of the reality of their danger; and the importance of taking steps against the recurrence of any similar risk, than the fact that the legislature of the colony voluntarily resigned the functions and privileges which they had enjoyed under a system of representative institutions for upwards of 200 years, in order to create a strong government, and thereby better provide for securing the safety and welfare of the colony in future.

“Copies of the various addresses presented to me are herewith attached.”

Mr. Eyre went on to notice some of the principal fallacies of his assailants. First, as to few lives having been taken after the outbreak, the only reason being that the whites *found refuge in flight* :—

“Great stress has been laid by a portion of the English press upon the fact, as they allege, that no lives were taken by the rebels after the first outbreak at Morant Bay, on the 11th October. This, however, is not strictly correct. Mr. Cockayne, a book-keeper, at Sir W. Fitzherbert’s, was killed at Blue Mountain estate, seven miles north-west of Morant Bay, on the morning of the 12th October ; Mr. Hire was killed, and several others left for dead, at Amity Hall, twenty miles from Morant Bay, in quite another direction (to the eastward) late at night on the 12th October. That other persons were not subsequently killed is due, not to the mercy of the rebels, but to the fact that for the most part their intended victims had escaped into the woods or cane fields, or out to sea in canoes. Let the words of the rebels heard by Mr. Harrison of Hordley estate, the warnings given to Mr. Hinchelwood of the Mulatto River, and many other facts and statements given in the correspondence declare *what would have been the fate of the white men and ladies and children had they been got hold of.*

“It must be also born in mind that whilst the rebellion broke out in the afternoon of the 11th October, troops were landed at Morant Bay the following morning, and had been pushed on to Port Morant, Bath, and the Rhine (the latter place seventeen miles from Morant Bay) by the evening of the 13th, and that on the morning of the 15th other troops were landed at Port Antonio ahead of the rebellion, and marched back upon it to meet it (at Long Bay) the same day.

"There was, therefore, little time or opportunity for the rebels to destroy more life. That they had the disposition and the intention to do so is, I think, abundantly shown by the documents attached."

He specially noticed the egregious fallacy as to the *non-resistance* of the rebels; as if it *was* any part of their policy to *meet* the troops, but rather to *avoid* doing so, and to wear them out by exhaustion, according to the strategy which, as Gordon had pointed out, proved so fatal to the Europeans in Hayti.

"Much has been said also about the non-resistance of the rebels.

"They did challenge and have a skirmish with the Maroons, and they occasionally fired at the troops, but it was not their policy to meet an organized armed body. Having devastated the estates, they retired to the woods and mountains, from which they could at any time make a raid against unprotected persons or property. No doubt they thought the troops would soon be removed, and at first they certainly thought also that the Maroons would join them, in which case it would have been very difficult to dislodge them. But the Maroons were faithful, and their skill a bushmen enabled the Government to drive out and capture the rebels from the interior fastnesses.

"It has been asserted that threatening letters or speeches are not indicative of a spirit of disaffection, or an intention to commit aggression, that when people mean mischief they do not proclaim it beforehand. Such, however, does not appear to be the character of the negro. The intention of the rebels to go to Morant Bay on the 11th, was openly announced by them the day previous, and Thomas Spencer Travers states that after rescuing the prisoners on the previous Saturday, the people 'went about the market threatening that that was nothing, they would see what would happen on the vestry day.' This threat was but too fatally carried out. Mr. Aaron at Montego Bay was threatened that his store should be burned, and it was done.

"The rebels openly threatened to burn down Mr. Hinchelwood's house and take his head; the first part of the threat was fulfilled, and the latter would had he not escaped in time.

"A large number of the reports now forwarded speak of the conduct and bearing of black people as being less industrious, less orderly, and less respectful than formerly, and as often exhibiting gratuitously offensive, insolent or defiant demeanour. They speak of the utter disregard of right, law, truth, honesty, or morality, of sullen vindictiveness and savage brutality, of excitement caused by imaginary wrongs sedulously preached to them by others, of agitation stimulated by designing demagogues, of statements calling their attention to their numerical strength as compared with

the white population, and of the *holding up to their view the results accomplished by the black race in the neighbouring republics of Hayti and St. Domingo.*

“Can it be wondered at that an ignorant, uncivilised, and grossly superstitious people, knowing the isolated and unprotected condition of the few white families scattered amongst them, should be tempted to rebel or should imagine that they could obtain possession of the country for themselves?

“The prompt suppression of the rebellion, and the severe punishment which followed, had produced a most beneficial effect; order, industry, and respect were once more observable throughout the country; but the unfortunate course taken by a portion of the English people and press, and which has widely been made known out here, has undone the good accomplished, and again created a degree of excitement, irritation, and disaffection, which it will now be difficult to allay, and which in all probability will entail upon the British Government a heavy expenditure for a long time to come in watching and protecting a colony teeming with such elements of disorder.”

Mr. Eyre pointed out the pernicious consequences which had ensued from the agitation got up on the occasion:—

“Already it has been stated that armed blacks have been met on the public roads attempting to waylay or intimidate persons coming down from the country districts to give evidence before the Royal Commissioners, and Sir Henry Storks has felt it necessary to issue a notice on the subject.* I would respectfully call attention to the opinions expressed by men of character and experience in many of the documents now transmitted in reference to the present state or future prospects of the Colony.

“The black people may be willing to run the risk of another rebellion, if they are led to believe that the sympathies of England are with them, and that they are not to meet with the punishment justly due to so heinous a crime should they prove unsuccessful.

“I must now close this very lengthy communication, and at the same time express my regret that time has not permitted me to analyse more carefully and to report more completely and connectedly upon the various points of interest or importance brought under notice in the many valuable reports and statements which have been furnished to me. But these

* It may be remembered that this was mentioned at the time, and it may be added that the Parliamentary Papers afterwards published contained a despatch of Sir H. Storks, stating an attempt on the part of the negroes in a certain district to obstruct the execution of the law, from which they were only deterred by a display of military force.

documents came in from time to time, and many have only reached me whilst preparing my report.

“I could not imagine that I should have been called upon to defend myself against attacks made by my fellow-countrymen at home for acts done in good faith, and from a sense of duty, and which were recognised on the spot by those most competent to judge as necessary, just, and merciful as a whole, or I might have made preparations for doing so earlier, and might also have collected other details which came under my notice during the rebellion, but which not having been then recorded cannot now be adduced.

“I will only add that I thought little of the almost unceasing and harassing labour, or of the constant and intense anxiety which I had to encounter during the outbreak and for long afterwards, or even of failing health, which such an overstrain of the system induced, because I felt conscious I was faithfully discharging my duty and doing good service to my country; but I confess I have felt most deeply the doubts and implied disapproval which have since been cast upon my conduct.”

It is desirable, before inserting the despatch of the Secretary of State adopting the report of the Commissioners, and grounding upon it the recall of the Governor, to state any material information before him at the time. While the Commissioners were sitting, however, and preparing a report, in which they declared the punishments which had been inflicted “excessive,” and that the continuance of martial law had been unnecessarily prolonged, a special commission sat for the trial of some of the prisoners who remained at the expiration of martial law untried, and two, being found guilty of murder, were sentenced to death and executed, and about twenty more were convicted of felonious riot, and sentenced for long periods or for life. (See the papers laid before the Commission of Inquiry by Governor Eyre.) The evidence in these cases strongly confirmed the view which had been taken by the Governor as to the formidable character of the rebellion, and his successor, Sir P. Grant, wrote thus upon it in answer to some suggestions by the Secretary of State as to a remission or mitigation of the sentences; and it will be seen that he maintained the necessity for carrying out the sentences in consequence of the further evi-

dence thus afforded as to the formidable character of the rebellion :—

“ It appears to me that, *as far as it goes*, this judicial evidence is of greater value than any evidence which could be obtained by the Royal Commissioners in their admirably conducted inquiry. Where evidence is given under the solemnities of a great criminal trial, with the certain consciousness that every word may affect all but the life of the person it implicates, in the presence of those implicated, subject to their cross-examination, closely restricted to the issue in hand and to the matters of fact within the personal knowledge of the witness, and necessarily carried through till everything material is brought out on both sides, it has properly an effect on the mind that evidence wanting, whether wholly or only partially, in these qualities cannot have. Now this evidence in this trial goes to the bottom of the outrage at Morant Bay on the 11th of October, and it goes sufficiently into previous proceedings, especially those at Stoney Gut on the 10th of October, to show how far that outrage was or was not pre-determined and pre-arranged, and what it was that those concerned imagined they had commenced when they had committed it. It must be taken, therefore, as affording in itself, not only the best foundation there is for a judgment upon the character of what was by far the greatest atrocity committed during the few days of actual disturbance ; but also to a considerable extent a good foundation for a judgment upon the design of the leaders concerned. It would be a great misfortune were any class of people here to fall into the delusion that because certain hasty measures of severity have been unavoidably disapproved, the acts which called forth those measures, so far as they were highly criminal and dangerous, are such as are thought lightly of by the highest authorities. The reaction after martial law must involve some risk of this sort ; and it would be an unfortunate necessity, were the Government obliged, on supreme considerations of a merciful justice, to do anything that might tend to confound a grave sentence of the law, regularly and solemnly pronounced, with some hasty proceedings which cannot be too greatly deplored. Having given the case of every one of these prisoners my best attention, *it is my opinion that considerations of justice will not admit of any remission of the punishment in some of the cases ; and that in others of them, though the mercy of the Crown may be extended to them at a future time, it would not be advisable, for the reasons to which I have above ventured to point, to announce any remission of punishment for a long time to come ; and then only if the state of feeling in the colony recovers its tone.*

“ 8. The judicial evidence in this case proves that the march and attack upon the Court-house on the 11th of October were premeditated as part of an intended insurrection ; that there had been previous swearings in and drillings in order to this movement ; that the assailants were to a certain extent an organized body, having drum and flag, marching under previously

appointed commanders, and capable of dividing into two, and of advancing in two lines under separate captains, when it was so ordered ; that occasionally in the course of the evening a sort of attempt to use military words of command, such as 'order arms,' 'load,' was made ; and that the murder of certain persons who were murdered on that occasion was pre-meditated, was openly spoken of before the day of the occurrence amongst those engaged in the attack, and was boasted of afterwards by others so engaged. This evidence throws no light on the cause which may have led to the conspiracy, but it proves that the assailants proclaimed, upon making their attack, their object to be 'war,' that the war announced was a war of colour, and that they themselves understood, *the day after the slaughter, that what they had undertaken was war.*"

The Governor then classified the prisoners sentenced for life into two great divisions—those who had and those who had not been convicted of specific murderous acts or attempts, and noticed each case in particular :—

"No. 24. *Daniel Stewart.*—This man was proved to have been at Morant Bay on the above occasion, with a musket over his shoulder. When a party of whites, having escaped from the burning houses, were hiding for their lives in a privy, he is proved to have discovered them there, and to have called out to his party, 'There is a lot of buckras (whites) in here, shoot them.' There it was that Mr. Hitchens was killed before the witness's face. The prisoner rifled witness, but spared his life, because he knew him to be a doctor.

"No. 25. *Alexander Taylor.*—This man is proved to have been at Morant Bay on the above occasion, and there to have been commanding the men, when assailing the police station, to do their duty, and being armed with a long spike and a cutlass, to have thrust the spike at David Graham, a volunteer ; also to have said that that fellow the Baron's head should be off that night ; also to have said of William Mitchell, a volunteer, when praying for his life, 'Kill him, kill the whole of them,' on which occasion another man saved Mitchell's life ; also to have been armed with a volunteer's rifle after the volunteers had been overpowered, and about sunset on that day to have said, 'All the buckra (whites) and volunteers not one will be left to-night.'

"No. 29. *Robert Wilson.*—This man is proved to have had his clothes covered with blood the day after the massacre at Morant Bay, and to have boasted of having been there, saying, 'We have killed gentlemen, a lot,' naming amongst those they had killed Mr. Walton, the Baron, and Mr. Herschel ; of these he said, 'We killed them all ;' also to have said that he had licked down a volunteer with his stick and taken his rifle and cartouch box ; also to have said that when the buckras (whites) were

escaping into the privy he ran his sword right through one of them, and as he drew it out the blood spilt on him ; after which, as he said, 'We drag out the whole of them, and kill them all.' He is also proved to have said that when they were drawing away the blacks from the burning house, they found one of Mr. Cooke's sons 'awfully murdered, but not dead yet;' when he, Wilson, called out, 'Hollo! here is one of the fellows not dead yet;' and he is further proved to have said, that when Cooke was trying to drag himself from the heat of the fire, 'We turned to and beat out his brains.' This man is also proved to have said, when asked next day why he kept on his clothes, daubed as they were with blood, that he kept them on because when a man made up his mind to join a war, he must make it up truly.

"The above-named prisoners all stand sentenced to imprisonment for life ; and I am bound to say that I think that several of *them ought to have been put upon their trial on the capital charge*. Taking the whole character of the affair into consideration, as proved by the evidence in the case, there is *not one of them* of whom it can be said, in my opinion, that imprisonment for life is an excessive punishment."

The Governor then went into the other cases, and noticing five cases of prisoners sentenced to twenty years' penal servitude, declared that there were no grounds for any remission, as they also were murder-meaning insurgents :—

"12. I come now to the cases of prisoners *sentenced for life*, in which, though *armed insurrection* is proved, *specific murderous acts or decidedly murderous intentions are not proved*.*

"No. 1. *H. T. Bogle*.—There is ample proof of this man having been with his brothers, an *active and leading insurgent* on the above occasions, both at Stoney Gut and at Morant Bay. At this last place, armed with a volunteer's sword, he personally advanced against one witness. But had this man, who certainly took a leading part, been really desirous to take life, I cannot but think that we should have had more evidence to particular acts of violence against him.

"No. 16. *Alexander Murray*.—This man is proved to have been in Morant Bay on the above occasion, having in his hand a volunteer rifle with a sword bayonet, when the Court-house was burning ; and to have

* Here is an illustration of the difference between martial law and common law —by the former armed insurrection is capital, but not by ordinary law, unless either there is some specific murderous act or some treasonable *intent* ; hence the necessity for a more severe law in rebellion. So in the Mutiny Act, section 15.

threatened to take the life of Chevannes, if he caught him, because Chevannes had put him in prison about some logwood.

"No. 20. *Ennis Napier*.—This man is proved to have been the head or captain of a gang of insurgents and to have been a leading man on both occasions.

"14. I proceed now to the cases of prisoners sentenced to imprisonment for terms of years.

"No. 5. *Elizabeth Faulkner*.—This woman is proved to have been at Morant Bay on the above occasion, where she urged the men to take off 'Old Bennett's' head, for having cheated her of half a yard of cloth out of six yards she had bought of him; and to having been beating at Bennett's door, and calling to the people to take out the wretch, &c.

"No. 19.—A case of a woman seen on the above occasion with a volunteer's cap on, and clothes covered with blood, saying that they were coming back to-morrow, and would then catch a volunteer named Lipman, as, said she, they had not done yet; also to have said that they had killed all the buckras, but had saved Dr. Major, who would come to see the wounded. On being asked how many were killed, she said, 'We killed the Baron and rolled him down. The brains is dashed out. *We kill Parson Herschel, we cut his neck*; and we killed Inspector Alberga, Mr. McCormack, and Mr. Hitchins, a captain of volunteers, and Mr. Cooke's sons, and Mr. Walton; and Parson Cooke got away; and Stephen Cooke escape, but if we could catch him, we would cut off his head.' This speech must have been made before those who were hiding had been discovered and killed.

"No. 26. *Elizabeth Taylor*.—This woman is proved to have been at Morant Bay on the above occasion, with her clothes tied up, and a stick in her hands with which she beat a volunteer, abusing him for having joined the volunteers instad of joining them at Stoney Gut, as his mother was a black woman; also to have said there that Parson Cooke was a bad man; also to have regretted that Parson Cooke's head had not been taken off, saying that the beating he had got was not enough.

"15. The last-named five prisoners are sentenced to imprisonment for twenty years. I see no ground for any remission in these cases. They were murder-meaning insurgents."

The conclusion was :—

"18. The principle on which I have based my recommendations is this—*not to interfere with the sentence of any of those who have shown a murderous mind*, and to reduce the sentence of all others to seven years, except in the case of Bogle, who, being a leader, might have his sentence reduced to ten years."

And the judge who had tried the prisoners only con-

curred in the suggestion that the mercy of the Crown should be extended to certain of the prisoners :—

“ Considering that your Excellency is of opinion, as I think most justly and judiciously, *that it would not be advisable in such case to announce any remission of punishment for a long time to come*, and then only if the state of feeling in the colony recovers its tone.”

Here, therefore, were about twenty persons sentenced to death, or to penal servitude for life, or for periods nearly equivalent, for actual participation in the rebellion, most of them either guilty of murder or murderous intent ; and the Governor and the judge concurred in declaring that *the mercy of the Crown could not be safely extended to any of them at present*, nor as to most of them at all.

Another matter also ought here to be mentioned, as it was within the knowledge of the Secretary of State at the time he received the report of the Commissioners.

It appeared that even while the Commissioners were sitting, so still unquelled was the spirit of rebellion among the negroes that they all but broke out into open insurrection again, on the occasion of measures to enforce the execution of the law for the recovery of some back land, which a number of them had seized and occupied. The negroes resisted and menaced their Governor. Sir H. Storks had to direct a military force to be prepared to enforce the law ; nor was it until this was known that the negroes were induced to relinquish their rebellious designs.*

Thus, therefore, in various ways it was made manifest, after all the measures of repression, that the spirit of rebellion and resistance to the law arising out of the causes described by the Commissioners was still rife among the negro population.

* And so obstinate was the spirit of resistance, that the attempt to obstruct the execution of the law was again made some months afterwards, and was only repressed by threatened recourse to military force.

It may here also be mentioned that, so hostile was the spirit shown by the negroes, that the Governor, Sir H. Storks, President of the Royal Commission, had to issue this notification to them during its sittings.

“NOTIFICATION.

“It having come to the knowledge of the Captain-General and Governor-in-chief that threatening language is made use of in many parts of the country, tending to create alarm for personal safety and for the security of property; and it being also well known that certain reports are current, tending to mislead the labouring classes, and to create irritation and bad feeling amongst her Majesty’s subjects, his Excellency strongly reprobates the use of such threatening language, and the circulation of such reports.

“His Excellency’s duty is to uphold and maintain the law, and to protect all her Majesty’s subjects in the pursuit of their lawful calling, and his Excellency declares that all the powers placed in his hands by her Majesty will be freely used for these purposes.

“The Captain-General and Governor-in-chief therefore invites all persons to assist his Excellency in allaying the irritation and bad feeling which exist, and in maintaining the law and public security.”

Before the sittings of the Commissioners were concluded, Mr. Eyre wrote to the Governor two further despatches, one of them enclosing a despatch to the Secretary of State, setting forth more fully than he was able to do before the Commissioners the grounds on which he had acted, especially in maintaining martial law in operation. He found a difficulty in getting his defence fully before the Commissioners, because they only received strictly legal evidence, while he, on the other hand, had been called upon to act at the moment upon the best information he could obtain, much of it, of course, necessarily hearsay. It is, therefore, right to set forth these despatches as showing the matters which had operated upon his mind at the time, especially as, in substance, the case thus stated was amply supported by the evidence adduced before the Commissioners. The first despatch of January 29th, 1866, was addressed by Mr. Eyre to his successor, Sir Henry K. Storks :—

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“Having been called upon by the Secretary of State to furnish information showing the grounds which existed for supposing that a spirit of disaffection was general, or which would justify the steps taken to repress and punish the late rebellion, I was engaged in procuring this information when your Excellency arrived and superseded me in the government.

“I now therefore transmit the documents which I have collected, accompanied by my own report upon them, to your Excellency, for the purpose of being laid before the Royal Commissioners, and attached to their proceedings as part of the evidence to be laid before Parliament.

“I think the documents now forwarded will clearly show that if there was not an organised combination to act in concert throughout the different parishes, there was at least in most of them a disaffected and seditious spirit, and both a preparedness and an intention to rebel, which any trifling circumstance might at any moment have stimulated into open revolt, and that, from the character of the people, wherever the wave of rebellion reached, the black population would as a body have joined it.

“With such a state of things in so many parishes, and with but very small means of meeting any emergency which might arise, there was no other alternative to ensure the public safety than to punish the rebels of the eastern districts with such promptness and severity as might intimidate the disaffected of other districts and deter them from following the example set in St. Thomas-in-the-East.

“So far from this spirit of disaffection arising from any real grievances or from any impoverished condition, the tendency of the evidence is to show that most of the rebels in the eastern parishes were well-to-do and comfortably off, and that both there and in other parishes the desire and the intention, often openly expressed, was to possess themselves of land, goods from stores, or other property without paying for them ; in fact, to dispossess the white man and inherit his possessions.

“Most of the parties whose testimony is now adduced are accessible to the Commissioners, should they desire to obtain further information from them ; and the several reports will themselves indicate the character and degree of information the writer is enabled to give.

“The belief in the imminency of a general rebellion, only averted by the steps taken by the government is all but universal, and this belief is founded upon the only grounds which could be expected to be met with—an intimate knowledge of the habits and character of the people, and the observation of a variety of small facts and circumstances indicating the tone of feeling, wishes or intentions of the peasantry.

“I would particularly call the attention of the Commissioners to the abundant testimony borne to the beneficial effects produced, not only in the eastern parishes, but in the other districts of the colony, by the course taken by the local government ; and I would ask them to contrast the improved prospect which was in consequence gradually becoming confirmed, with the unsettled, excited, dissatisfied, and threatening state of affairs which is now said to exist, and to have arisen since the views expressed

and the action taken by persons in England have been made known to the negroes."

The documents enclosed were similar to those required by the Commissioners, and their effect is to a great extent acknowledged and embodied in the Report.

The despatch to the Secretary of State runs as follows. It was dated April 6, 1866 :—

"SIR,—I have the honour to transmit a portion of a paper containing statements which I wished to give in evidence before the Royal Commission, but which the Royal Commissioners decided to be inadmissible in their entirety, because they embodied summaries, inferences, or an occasional reference to circumstances which had transpired since the termination of martial law.

"Some of the facts mentioned and most of the documents referred to were given in evidence, but not in the connection in which they are now placed ; and as I think it important to show in a continuous form the action and influences which were agitating the country, stirring up discontent, and creating a tendency to rebellion, I would respectfully request that this communication may be laid before Parliament, together with the proceedings of the Royal Commission.

"In order to judge fairly of the position I was placed in, and of the action I deemed it right to pursue, it is necessary not only that the abstract facts should be recorded, but that the impressions and inferences which those facts produced upon my own mind, should also be stated.

"It is an important point, too, to show, by a reference to a few documents, or occurrences subsequent to the expiration of martial law, that the state of things which existed prior to its termination still continued for some time afterwards, and consequently that I had not formed a wrong estimate of the condition of the country, and of there being good grounds for fearing a liability to further disturbance,

"Even as recently as the 14th ultimo, Sir H. Storks found it necessary to send 150 soldiers to enforce an order of the Supreme Court at 'Hartlands,' within four miles of Spanish Town, the seat of government, and whilst the Royal Commission was actually sitting. The negroes in possession of that tract of land having collected in numbers, and declared that they would not allow the surveyors to make the survey ordered.

"This incident shows forcibly the state of feeling amongst the negroes even now in respect to such questions ; and as there are many cases very similar to that of 'Hartlands' all over the island, but without the advantage of their being near the seat of government, and within the immediate reach of a large military force, it is almost certain that great difficulty, if not disturbance, will arise whenever attempts are made to ascertain whether the negro occupants have any legal right to the lands upon which

they have located themselves, or to put in possession the legitimate owners where the negro occupants can establish no such right.

"The first portion of the paper which I had originally prepared, and the tabulated statement which accompanied it, containing references to and abstracts of documents received between the commencement of the rebellion and the termination of martial law, having been received and recorded in full in the words and form in which I read it before the Commission on the 20th March, I wish the remaining portion of the papers now transmitted to be considered as a sequel to and continuation of the statements then made, and to be read in connection with them.

"The documents referred to in the enclosed statement, which were not handed in to the Royal Commissioners (when continuing my evidence on the 21st March), are now attached to this statement.

"P.S.—I have omitted to notice in my statement two points which, though not before me during the existence of martial law, and therefore not in any way influencing my course of action during that period, may perhaps very fairly be taken into consideration by her Majesty's Government in judging generally of late events.

"The first is that Lieutenant Edenborough, commanding a Confederate vessel of war which called at Jamaica between three and four months before the outbreak at Morant Bay, was applied to by G. W. Gordon either to sell the vessel and her armament, to be sent to 'Black River,' or to charter her for a voyage to 'Inagua,' to convey arms and ammunition and certain Haytians from that place to be landed at Black River.

"Mr. Gordon also spoke to Lieutenant Edenborough of 'a new West India republic.'

"(See communication referred to at page 253 of 'Papers relating to the Disturbances in Jamaica.' February 1866. Part I.)

"The other point is, that a large number of persons actually concerned in the disturbances in St. Thomas-in-the-East were indicted for 'treason,' and true bills found against them by the grand jury.

"They were subsequently tried for the minor offence of 'felonious riot,' because, as the Attorney-General states in an explanatory letter (herewith attached)—

"First, 'Nobody wanted to see eighty-four people even sentenced to be hung;' and, secondly, the Attorney-General was influenced 'by a consideration of the effect which a verdict of "guilty of treason" would have had in the mother country, more especially as the Royal Commission was appointed to inquire (*inter alia*) into the nature of the unquestionably atrocious rise against constituted authority in St. Thomas-in-the-East.'

"I append the various documents connected with the 'Treason' case which have been furnished to me by the legal gentlemen employed by the Crown. (These it is not material to insert.)

“STATEMENT for the Secretary of State for the Colonies in connection with, and in sequence to, the evidence given by Mr. Eyre before the Royal Commissioners on Tuesday, 20th March, 1866.

“I call attention to two documents found amongst Paul Bogle’s papers (documents handed in to the Royal Commissioners), tending to show an intention on the part of the negroes of undertaking the administration of justice themselves. I also place on record a leading article from a local newspaper (the *Jamaica Tribune*) published three months before the outbreak, showing that even at that time mock courts of justice were being held in other parishes. (Copy of the *Jamaica Tribune* handed in to the Royal Commissioners.)

“Government received information that these courts were established in St. Andrew’s, St. David’s, and St. Thomas-in-the-East.

“I also call attention to a document placarded in St. John’s parish, calling out the St. John’s No. 1 Volunteer Corps for drill. (Document handed in to Royal Commissioners.)

“These documents tend to show a disposition and ultimate intention on the part of the black people to establish for themselves institutions similar to those in vogue amongst white people, as nearly as their capacity and powers of organization would enable them to do so. It must be borne in mind that documents or acts which appear to us as simply ridiculous are not so viewed by the black people; and here I would give an illustration showing how little the estimate which a negro forms of any document can be measured by the importance which it bears in the opinion of Europeans, and showing also how credulous, ignorant, and obstinate they are in putting their own interpretation upon even official documents issued by the government.

“The Rev. Bassett Key, a clergyman of the Church of England, writes to me, that after reading to his congregation ‘Sir H. Storks’ notification with regard to the use of threatening language, and the circulation of reports tending to mislead the labouring classes, the greater part asserted that the notification did not come from Sir Henry but from myself, and that the purport of it was ‘to ask pardon of the people, as the Queen was on their side.’

“Upon the clergyman trying to undeceive them they declared ‘that parson was humbugging them,’ and that they did not believe either him or the notification.

“It is difficult to know how to produce any effect upon such people except by the strong hand of power, when they outrage or set at defiance the laws.

“I append the Rev. Bassett Key’s letter and a copy of the notification referred to. I also append a letter from the Rev. D. Panton, one of our best and most earnest clergymen, showing how greatly the negroes have misunderstood the nature of the proceedings connected with the Commis-

sion of Inquiry, and the evil results likely to flow from such misunderstanding. This letter, emanating from a man of Mr. Panton's high character, zeal, and experience, deserves a most attentive and thoughtful consideration.

"From all the communications (received prior to termination of martial law) which I have laid before the Commissioners, it was clear to me that *there was not a parish in the island where some grounds for apprehension or urgent necessity for taking protective measures did not exist.*

"The custodes (who are *quasi* lord-lieutenants), or the magistrates, or other persons of position or respectability, were continually pointing out the defenceless and unprotected state of their parishes; reporting that disaffection existed, that seditious or threatening language or expressions of sympathy with the rebels were openly made use of, that nightly meetings were taking place, or secret drillings being carried on, and that letters threatening to destroy life or property were being received or placarded up; making application for arms and for permission to embody volunteers; calling out the rural or enrolling special constables, and urging upon the Government to send troops or ships of war to afford protection, or to keep down expected risings. Specific applications of this kind (for troops or ships of war) were received on behalf of no less than ten parishes, namely, Portland, St. Thomas-in-the-Vale, St. Elizabeth, Vere, Westmoreland, St. Mary's, St. Ann's, Clarendon, Hanover, and Manchester, in addition to which Kingston was considered in such danger that the pensioners had to be embodied as additional troops. St. James, Trelawney, and St. George's had to be garrisoned. Metcalfe had to be visited by troops. St. Catherine's, St. Andrew's, and Port Royal had military stations in them, and St. David's, St. Thomas-in-the-East, and Portland were the theatre of active military operations.

"*Thus nineteen parishes out of the twenty-two of which the colony consists* had to be occupied or visited by troops, in addition to which large numbers of volunteers were embodied, or rural or special constables called out in every parish as an additional protection. The whole island was like a country in a state of warfare.

"All these circumstances, too, be it remembered, were either prior to the proclamation of the amnesty, or within a very few days afterwards, and before martial law terminated; indeed, many of the applications for troops could not be met until after the amnesty had been proclaimed; as, for instance, Manchester, Black River, Port Maria, Brown's Town, Falmouth, Montego Bay, and Lucea.

"There was also an universal opinion expressed throughout the colony that if disturbances did arise in any district, or if the wave of rebellion from without should reach it, there were plenty of negroes in every parish ready to join in such rebellion, whilst none were likely to obstruct or resist it.

"In addition to the documents from which abstracts or extracts have been given, I received many private letters myself, or saw private letters written to other persons, which cannot now be produced, and I was in

constant communication orally with custodes, magistrates, or others, in reference to the state of the island, or of particular districts.

"The tendency of all the information which thus reached me was to produce an absolute conviction on my own mind (and this conviction was shared in by my constitutional advisers) that the whole colony was in the most imminent danger, and that the least mistake of policy or any delay in carrying out the policy considered necessary, would inevitably have been fatal to the peace and safety of the country, and would have led to a repetition in other parishes of disturbances similar to those which occurred in St. Thomas-in-the-East.

"Such was the state of things which existed with regard to the colony at large prior and up to the time when it was decided to proclaim an amnesty (to all persons in the disturbed districts, excepting some who were to be specially excluded); and I have given evidence before the Commissioners that had any rising taken place at this period there was not a single soldier available who could have been spared to suppress it, one half of our small force being engaged in military occupation of, and in preserving order in, the eastern parishes, and the other half in guarding some few outposts, or in protecting Kingston, which itself was considered to be in great peril from the seditious feeling known to exist amongst a considerable number of its inhabitants.

"The additional troops from Nassau and Barbadoes did not arrive until the 28th October, and could not be distributed for some three or four days afterwards.

"It then required some little time longer to enable the Government to judge how far the military dispositions made were likely to be efficacious in preserving the peace of the country.

"Shortly before this time the Government obtained possession of a letter written by Mr. Levien, proprietor and editor of the *County Union* newspaper, to Dr. Bruce, of Vere, indicating a conspiracy to agitate the people for the purpose of creating anarchy and tumult. This circumstance, and the seditious tendency of the writings in the *County Union* generally made it necessary to arrest Mr. Levien, a step which was reported by Colonel Whitfield to have created an unsettled state of things at Montego Bay (where Mr. Levien resided), and a threatened riot. Other arrests of suspected persons had been made in Vere, Kingston, Spanish Town, or other places. There was a general state of excitement in these and in many other districts, and a consequent necessity that all the measures of the Government should be of the most prompt and decisive character. The police were utterly insufficient in point of numbers, ineffective in point of discipline and arming, and of a class little to be depended upon in any real emergency. The volunteers were for the most part recently embodied, inefficiently armed, and comparatively undisciplined. At this time, too, it was supposed that the *Haytian refugees were complicit in the rebellion which had broken out in Jamaica*. The vicinity of Hayti—the fact that a rebellion was at the time going on

in that country—and the sudden appearance at a port in the disturbed districts of this colony of a vessel laden with gunpowder, and with Haytians on board, all gave a strong colouring to this supposition.

“There were thus many and substantial grounds for great anxiety on the part of the Government in reference to the entire Colony.

“Whilst such was the state of affairs generally, the particular case of the eastern parishes stood thus :—The rebellion had been headed, hemmed in, and crushed. Many of the ringleaders or chief instigators had been tried and executed, but there were still many prisoners on hand yet untried. These, as well as any still at large who had been guilty of arson and murder, and were uncaptured, were excepted from the amnesty.

“I wish also particularly to call attention to the fact that from personal communication with many of the individuals who had been obliged to fly for their lives, and from statements made to me by other persons who had had similar communication, I was aware that what in England is termed a ‘local riot’ had extended in a very brief space of time for about 40 miles in one direction from Morant Bay (to Elmswood, three miles beyond Mulatto River), and for nearly 20 miles in another direction (between Monklands and Arntully); that at those extreme points properties had been plundered and threats used; that the whole of the intervening country had been more or less in possession of the rebels, and the properties therein more or less injured; that parties belonging to all parts of the country within the area referred to had taken part in these proceedings; that threats to kill all the white and coloured men, and to reserve the ladies and estates for themselves, had been freely indulged in, and that there had been a certain amount of combination and organisation.

“All these circumstances satisfied me that the occurrences in the eastern districts could be designated by no other term than that of widespread rebellion, whilst the facility and rapidity with which the inhabitants of so large a tract of country took up and joined in the movement necessarily made me most anxious as to the whole colony, and forced upon me the conviction that opportunity alone was wanting for rebellion to blaze from one end of the island to the other.

“With these facts before me prior to the meeting of the Legislature on the 8th November, I could have no doubt in my own mind, and I did not hesitate to express in my opening address my opinion, that a conspiracy existed to murder the white and coloured inhabitants.

“If an attempt at military organisation and the administration of oaths to persons, binding them to join the rebels, an endeavour to form an alliance with the Maroons, an expressed intention to destroy all the white and coloured males, or to reserve the females for their own use, and the preservation of properties from destruction in order that they might occupy those properties themselves, do not indicate a conspiracy to get rid of the dominant race and to take by force their possessions, it is difficult to imagine what would be considered sufficient proof of conspiracy.

“This design was actually being carried on in St. Thomas-in-the-East,

and towards, if not into, St. David's on the one side, and Portland on the other; and it was the arrival and prompt action of the military forces which alone prevented the rebellion from being extended into other adjacent parishes in Surrey, where it was known there were plenty of sympathisers and other evil-disposed persons ready to join at a moment's notice.

"The state of the county of Cornwall, which necessitated the sending of vessels of war to western ports in July and August, and the official reports of custodes and other magistrates throughout the island, not only gave valid reasons to the Government for a *bond fide* belief that this same design would manifest itself in other parishes by overt acts of a similar nature to those in St. Thomas-in-the-East, but rendered it absolutely imperative upon the Government to deal with the whole state of affairs in all the parishes so as to meet all actual and probable results.

"The same causes which produced effect in St. Thomas-in-the-East were also the causes which had been set in operation in the other parishes. The lower orders of the people in all the parishes had been worked upon in the self-same manner by persons whose writings and conduct demonstrated a unity of action and a common object—the setting up the minds of the lower orders against the higher orders of society by means of pretended wrongs and oppressions.

"I refer especially to the articles in the *Watchman* and *County Union* newspapers, and to the inflammatory speeches held all over the country.

"Up to the time of the delivery of my address to the legislature, and even up to the holding of the Commission, nothing had been shown to alter the views taken by the Government with the almost unanimous pressure and approbation of the community.

"It was therefore considered necessary to continue martial law after the proclamation of the amnesty, for the following reasons:—

"1st. In order to deal summarily with the cases excepted from the operation of the amnesty, many of the parties being as guilty as those tried by courts-martial previous to the amnesty, and there being no valid reason why they should not be dealt with in the same manner.

"2nd. To preserve peace and good order in the districts where the rebellion had existed, and to afford time to reorganise the civil institutions. The custos, the magistrates, the clergy, and other principal inhabitants had been killed, wounded, or driven away. The inspector of police had been killed, and the force become disorganised and demoralised; the Court-house itself was burnt to the ground.

"It was impossible to re-establish civil institutions and relations at such a juncture, or without a sufficient time being allowed for reconstruction and for the return of the magistrates, clergy, and other inhabitants who had been compelled to fly during the rebellion.

"3rd. It was important that for some short time longer at least the Government should continue martial law, to operate as an example and a

warning *in terrorem* over the disaffected of other districts, without the necessity of imposing it in those districts.

“4th. The indication which the continuance of martial law in the county of Surrey for some days after the amnesty gave of the determination of the Government to deal promptly and decisively with persons guilty of rebellion, or the concomitant crimes of murder and arson, was the most efficacious step it could take to overawe the evil-disposed in other parts of the colony, and thereby prevent any rising amongst the negro population of the districts where disaffection and seditious tendency were known to exist.

“The documents to which reference has been made are designedly carried down to a date ten days subsequent to the expiration of martial law, the object being to show that good grounds for anxiety and apprehension of disturbances continued to exist, not only during the whole period of martial law, but for some time after it was over.

“(See reference (attached) to documents received between 13th November and 23rd November.)

“The last document quoted shows that even as late as the 23rd November, after all the troops and ships of war at the disposal of the Government had been distributed, three members of the Legislative Council and seven members of the House of Assembly, resident in and intimately acquainted with the parishes of St. Elizabeth, Trelawney, Westmoreland, St. James's, and Hanover waited upon me in a body to represent the inadequacy of the arrangements made ‘either to prevent or to repress outbreaks in the interior of the parishes of the county of Cornwall.’

“Illegal drillings in various parishes, or the preparation or repairs of weapons, were officially reported to the Government at still later dates.

“These facts and reasons will, I trust, satisfy her Majesty's Government that martial law was not unnecessarily imposed in the first instance or continued for an undue period of time afterwards.

“In proof of my own unwillingness to have recourse to martial law unless upon the fullest and most absolute conviction of there being no other alternative compatible with the safety and protection of the colony, I would call attention to the fact that I twice refused to impose it, once when called upon most urgently to do so by the custos and magistrates of Kingston, and once when requested to do so by the general commanding in the colony, upon the representation of the officer in command of the troops stationed in the western districts of the island.

“I have placed before the Royal Commission in my evidence an extract from a despatch which I addressed to the Secretary of State on the 26th of April, 1865, in reference to the effect likely to be produced by Dr. Underhill's statements and the use made of them by designing persons.

“I desire to place on record the following extracts from subsequent despatches:—

"In a despatch dated the 17th May, 1865, I wrote to Mr. Cardwell, 'You will observe, however, that the 15th resolution calls upon the descendants of Africa throughout the island to form societies or hold meetings and co-operate for the purpose of setting forth their grievances.'

"There are always a number of political demagogues ready to stir up the people to a belief of imaginary wrongs, and I can only repeat the opinion that I expressed in my despatch, No. 117, of the 25th ultimo, that Dr. Underhill's letter will be productive of much evil to this colony by unsettling the minds of the peasantry and making them discontented.

"And in a despatch dated the 22nd August, 1865, I again wrote to Mr. Cardwell :—

" 'It is quite clear that if the ministers of religion residing amongst an ignorant, debased, and excitable coloured population take upon themselves to endorse and reiterate assertions such as those in Dr. Underhill's letter, to the effect that the people are starving, ragged, or naked, that their addiction to thieving is the result of extreme poverty, that all this arises from the taxation being too heavy, that such taxation is unjust upon the coloured population, that they are refused just tribunals and denied political rights, then such ministers do their best not only to make the labourer discontented but to stimulate sedition and resistance to the laws and constituted authorities.

" 'Nor should I be surprised, if in the districts where such a course is taken, a refusal to pay the taxes and subsequent disturbances in enforcing them should be the result.'

"In my evidence before the Royal Commission, I stated that Dr. Underhill's letter was not published by me. I wish to place on record exactly what took place.

"On the 5th of January, 1865, Dr. Underhill wrote an official letter to the Secretary of State, containing very serious allegations in reference to the treatment of the coloured classes in Jamaica. That letter asserted that they were starving and naked; that this condition, though aggravated by a temporary drought, arose in a great measure from over-taxation, and that in consequence of their destitute condition they were driven to steal. The letter further alleged that they were unjustly taxed, that they were refused just tribunals, and that they were denied political rights. The natural, in fact the necessary, consequence of such a communication having been addressed to the Secretary of State for the Colonies, was (as Dr. Underhill must have been aware would have been the case), that it was at once referred to the Governor of the colony, that the statements made might be tested and reported upon.

"The Governor in his turn, in order to make a full and impartial report, was necessitated to refer the communication to the custodes, to the ministers of religion of all denominations (including the Baptists, to which Dr. Underhill belongs), and to various other persons of position, influence, and experience in the colony.

"This is exactly what was done, and it is just what Dr. Underhill might

and ought to have foreseen would take place. He ought also to have foreseen that where a statement had to be made known to such a variety of persons (though only sent as an enclosure to a letter to each individual whose opinion was sought), some one would be sure to make the document public, and this is what did happen.

"Dr. Underhill, in a letter printed in the *Times*, charged me with publishing his letter in the *Island Gazette*. This is not correct, and I repeat that I never did publish it in any way in the sense referred to by Dr. Underhill, nor do I know who did. Dr. Underhill expressly distinguishes publication from the issuing of circulars to custodes, &c., &c.

"But, under any circumstances, Dr. Underhill must or ought to have known that in writing such a letter at all to the Secretary of State for the Colonies, he ensured the subject-matter of it being sooner or later made generally known in the colony to which it related.

"I append a copy of the circular addressed to the ministers of religion, enclosing Dr. Underhill's letter.

"Since writing the above a letter has been published in the *Colonial Standard* newspaper, announcing that the Rev. J. Henderson, a Baptist minister of Montego Bay, himself published Dr. Underhill's letter, and sold it to the negroes at three half-pence per copy. I append the letter referred to.

"In connection with the whole question of the apprehension of persons suspected of complicity in the rebellion, I would bring under notice that the Local Acts, 29th Vict., cap. 1, 'An Act to indemnify the Governor and all other officers and persons concerned in suppressing the late rebellion in this island;' and 29th Vict., cap. 2, 'An Act to enable the Governor to detain persons arrested during the prevalence of martial law,' have given the same practical legality to the proceedings of the Jamaica Government that an Act to suspend the Habeas Corpus is now giving to the Government of Ireland. The only difference being that the British Parliament was enabled to pass the law suspending the Habeas Corpus beforehand, whilst the Jamaica Government was, from circumstances, necessitated to act first and obtain the sanction of law afterwards.

"I imagine also that even if the local laws referred to were now to be disallowed, yet as they have been in valid operation for some time subsequent to any of the transactions intended to be covered by them, and as they are essentially retrospective, the indemnity provided would still remain complete.

"There is one point connected with martial law which I wish to bring under notice.

"When proceeding in the 'Caravelle,' on the 20th October, we met the 'Wolverine' coming back from Morant Bay, and I went on board to learn the news and see the refugees. I found there were many prisoners on board the 'Wolverine,' who had been taken at Morant Bay, and two questions arose in connection with them; first, whether if the ship went up to Kingston (a district not under martial law) they could be reconveyed back

to Morant Bay for trial; and, secondly, whether they could be tried at all under martial law for offences committed before martial law was imposed.

"I at once sent for the Attorney-General, who came from the 'Caravelle' to the 'Wolverine' to discuss these questions. On the first point I understood that although the 'Wolverine' went up to Kingston, yet if the prisoners were not landed they might still be considered as prisoners captured under martial law, or at all events there was little prospect of an Habeas Corpus being sued out or executed under the circumstances.

"In reference to the second point, I understood the Attorney-General to be of opinion that, although some doubts might exist as to the strict legality of trying persons under martial law for offences committed before the proclamation of it, yet that it was done during the martial law of 1832, that if the emergency was sufficient it might be done, and that the Attorney-General would not hesitate to do it himself, trusting to an Act of Indemnity being subsequently passed.

"The bearing of this opinion with regard to G. W. Gordon's case will readily be perceived.

"It was a well-known fact that Mr. Gordon visited most of the parishes in the island during the few months immediately preceding the rebellion, that he held meetings, both public and private, and that his avowed object was to agitate and to stir up the people to obtain redress for their supposed wrongs. It was also currently stated that Paul Bogle accompanied him on his tour, or during a portion of it.

"The knowledge that so many persons of better position or education, and possessing considerable influence amongst the negro population, were or had been engaged in proceedings calculated to excite sedition, when taken in connection with the actual outbreak of rebellion at Morant Bay, necessarily occasioned the Government much anxiety, and afforded strong grounds for believing that disaffection was widespread, and a readiness to revolt general.

"It was impossible to tell how many others, besides those who were known to have taken part in seditious proceedings, might not be similarly implicated, and, indeed, the custodes, magistrates, and other persons of position and influence in the different parishes were (as I have already shown) continually bringing under notice the existence of disaffection, the use of seditious or threatening language, and the necessity for affording immediate protection.

"In order, therefore, to guard as far as possible against further outbreaks, it became essential that Government should exercise the utmost vigilance, promptness, and decision.

"The two latter could only be secured by the continuance of martial law for a period sufficient to enable the Executive both to make their military arrangements, with regard to the colony generally, and to see the effect of such arrangements in preventing any further disturbances."

Mr. Eyre thus dealt with the question of his responsi-

bility for the excesses, and showed that, so far as he was aware of them, he had endeavoured to prevent them :—

“Having been personally present in the eastern district up to the 20th October, and considering that one of the chief grounds stated for the appointment of a Commission of Inquiry was an allegation of ‘excessive and unlawful severity,’ I think it right to mention that no such cases came under my own observation, nor were any brought to my notice, or any complaints made to me against the officers in command during the whole period of martial law.

“About the period that martial law terminated three instances came to my knowledge in which misconduct was alleged.

“One a complaint that a Mr. Codrington, a local magistrate, had improperly caused some persons to be flogged.

“Finding the statement to be true, I at once removed Mr. Codrington from the commission of the peace, and directed the Attorney-General to prosecute him, but it was found the prosecution could not be carried out, being barred by the Act of Indemnity.

“Another was an instance in which the Provost-marshal, Mr. Ramsay, was alleged to have acted improperly towards a Mr. Marshalleck, a store-keeper and magistrate of Morant Bay.

“Mr. Ramsay was severely reprimanded.

“The third was an allegation that Mr. Ramsay had caused a person to be hung without a previous trial by court-martial.

“I was engaged in making inquiries into this case when Sir H. Storks arrived and relieved me in the Government.

“It is only justice to Brigadier-General Nelson to record my fullest conviction that all that officer’s proceedings and all instructions given by him to those acting under him were characterised by the utmost consideration and humanity, consistent with the duty which devolved upon him of putting down and punishing an extensive and serious rebellion.

“In reference to the arrest of G. W. Gordon I may state that my constitutional advisers and I were unanimous as to the advisability of the arrest being made, and that opinion was backed up by the almost unanimous voice of the public.

“After the arrest and when on board the ‘Wolverine’ Mr. Westmorland I think suggested that Mr. Gordon might be tried by a special Commission, but I did not consider the state of the country, or the circumstances of the moment, such as to admit of that course being taken. I wish, however, to state distinctly that this was only a mere suggestion in talking over the matter.

“There was no regular consultation or any formal recommendation or advice tendered, nor was there any difference of opinion between myself and my constitutional advisers in reference to this or any other course of action taken by the Government during the rebellion. It was unanimously

agreed by my advisers and by the custos of Kingston that Gordon could not with safety to the public peace be detained a prisoner at or near Kingston, where the number of troops was considered insufficient to prevent a rising or the firing of the town, should such have been attempted, as was feared might be the case. Besides, I had been to St. Thomas-in-the-East, and from what I there heard had become impressed with the necessity of at once capturing Mr. Gordon and bringing him to a summary trial.

"With regard to the trial and execution of G. W. Gordon, I think it right to mention that as the case was somewhat exceptional, and a Sunday intervened between Gordon's condemnation and the day appointed for his execution, Brigadier-General Nelson transmitted the proceedings of the court-martial by which Gordon was tried to Major-General O'Connor.

"Major-General O'Connor read the proceedings to two members of the Executive Committee (Mr. Westmorland and Mr. Hosack), and then transmitted them to me unaccompanied by any expression of dissent either from himself or from the members of the Executive Committee named.

"Those proceedings satisfied me as to Gordon's complicity in the occurrences at Morant Bay, and as I firmly believe that in order to put a stop to seditious writings, speeches, and acts, and thereby save the colony from the horrors of renewed rebellion, it was essential to make a severe example, I had neither scruple nor hesitation as to the course the public safety required to be taken.

"Nor do I doubt but that Gordon's execution had the most powerful influence in putting down sedition and deterring others from revolt.

"What, however, I wish to place distinctly on record is the fact that the Major-General commanding, two members of the Executive Committee, and myself all saw the proceedings in Gordon's court-martial in time to have taken the necessary action to stay execution, had we deemed it right to do so.

"Brigadier-General Nelson was aware of this, and before execution actually took place, must thus have felt satisfied from our non-interference that we did fully concur in the justice of the sentence. He had also received a private note from myself explicitly stating my own opinion.

"I called attention to this private note, as I wish it to be clearly understood that there is nothing in connection with the late rebellion and the course of action taken by myself or by Brigadier-General Nelson which we desire to conceal or withhold. We had a very difficult and a very anxious duty to discharge, and we endeavoured to perform it to the best of our judgment and ability, and with a single view to ensuring the safety of the colony and upholding the honour of the Crown.

"Finally, I append, with, I trust, a pardonable pride, a volume of addresses which have recently been presented to me, signed by thousands of colonists of both sexes, and of all ranks, classes, occupations, and politics, as a proof, if further proof be wanted, of the all but universal recognition by those most interested and best able to judge both of the

imminent peril which threatened the entire Island, and of the necessity and justice of the steps taken to avert it.

“E. EYRE.

“Flamstead, April 6, 1866.”

Such was the substance of the defence made by Mr. Eyre, and supported by a great body of evidence laid before the Commissioners.

On the 18th June, 1866, the Secretary of State accompanied the publication of the report of the Royal Commissioners with a despatch, in which he conveyed the final judgment of the Government upon the case. Mr. Secretary Cardwell, in this despatch, entirely adopted their approval of the course taken by the Governor in the declaration and maintenance of martial law.

“In the conclusions at which you have arrived her Majesty’s Government generally concur. Though the original design for the overthrow of constituted authority was confined to a small portion of the parish of St. Thomas-in-the-East, yet there can now be no doubt that the disturbances there had their origin in a planned resistance to that authority. It is further evident, looking to the singular rapidity with which disorder spread over an extensive tract of country, and to the state of excitement prevailing in other parts of the island, that the ultimate defeat of the insurgents would have been attended with a still more fearful loss of life and property had they been permitted to obtain a more than momentary success. Under these circumstances, Governor Eyre fully deserves all the commendation which you have bestowed upon the skill, promptitude and vigour which he manifested during the early stages of the insurrection, to the exercise of which qualities on his part you justly attribute in a great degree its speedy termination. As regards the proclamation of martial law under the Island Act of 1844, her Majesty’s Government agree with you that the Council of War had good reason for the advice which they gave, and the Governor was well justified in acting upon that advice. Her Majesty’s Government agree in your conclusion that the military and naval operations were prompt and judicious; and considering the large share personally taken by Governor Eyre in the direction of those operations, they attribute to him a large share also of the credit which is due for their success.”

But the Secretary of State went on to adopt also their

conclusions as to the continuance of martial law and its execution :—

“It remains to consider the conclusions at which you have arrived with respect to the continuance of martial law in its full force, to the extreme limit of its statutory operation, and to the excessive nature of the punishments inflicted. In reviewing the painful position of the case, The greatest consideration is due to a Governor placed in the circumstances in which Governor Eyre was placed. The suddenness of the insurrection, the uncertainty of its possible extent, its avowed character as a contest of colour, the atrocities committed at its first outbreak, the great disparity of numbers between the white and the black populations, the real dangers and vague alarms by which he was on every side surrounded, the inadequacy of the force at his command to secure the superiority in every district, the exaggerated statements which reached him continually from distant parts of the island, the vicinity of Hayti, and the fact that a civil war was at the time going on in that country : all these circumstances tended to impress his mind with a conviction that the worst consequences were to be apprehended from the slightest appearance of indecision.

“Nor must it be forgotten that he resisted the proposal urgently made to him by the custos and the magistrates to proclaim Kingston, that he refused to accede to the suggestion of Colonel Whitfield to proclaim the parishes of Trelawney, St. James's, Hanover, and Westmoreland, or to that of Major-General O'Connor, who thought that, from the first, the whole island ought to have been placed under martial law ; and that in respect both to the assistance offered by the Governor of Cuba, and to the summoning of British troops from Halifax, Nova Scotia, he showed himself superior to feelings of alarm expressed and entertained by those around him.

“That I may do full justice to the reasons which induced him to consider desirable the continuance of martial law, I will transcribe them in his own words.

“In answer to your question, No. 46,634, he says :—

“I now give the reasons which induced me to think that martial law should be continued. They are very short :—

“1st. In order to deal summarily with the cases excepted from the operation of the amnesty, many of the parties being as guilty as those tried by courts-martial previous to the amnesty, and there being no valid reason why they should not be dealt with in the same manner.

“2ndly. To preserve peace and good order in the districts where the rebellion had existed, and to afford time to re-organize the civil institutions. The custos, the magistrates, the clergy, and other principal inhabitants, had been killed, wounded, or driven away. The inspector of police had been killed, and the force become disorganized and demoralized. The Court-house itself was burnt to the ground. It was impossible to re-establish civil institutions and relations at such a juncture, or without a suffi-

cient time being allowed for reconstruction, and for the return of magistrates, clergy, and other inhabitants who had been compelled to fly during the rebellion. I think that is one very important reason why it was impossible to have suspended martial law.'

"And in answer to the question, 'What, in your opinion, would have been the evils that would have arisen from taking that particular course on the 30th of October?' he proceeds:— '3rdly. It was important that for some short time longer, at least, the Government should continue martial law, to operate as an example and a warning *in terrorem* over the disaffected of other districts without the necessity of imposing it in those districts. 4thly. The indication which the continuance of martial law in the county of Surrey for some days after the amnesty gave of the determination of the Government to deal promptly and decisively with persons guilty of rebellion, or the concomitant crimes of murder and arson was the most efficacious step it could take to overawe the evil disposed in other parts of the colony, and therefore prevent any rising amongst the negro population of the districts where disaffection and seditious tendencies were known to exist. Those were the four principal reasons which operated with the Government at the time."

"On the other hand, however, it must be borne in mind that martial law, and the execution of capital sentences under martial law, continued for the full period of a month authorised by the statute, although after the few first days of the insurrection no serious outrages were committed by the insurgents, nor was any resistance offered to the troops. As early as the 27th October, Governor Eyre wrote to me that on the 20th he had left Morant Bay, satisfied that the rebellion was got under; and on the 30th, a fortnight before the actual expiration of martial law, it was formally stated in the proclamation of amnesty that the wicked rebellion lately existing in certain parts of the county of Surrey had been subdued; that the chief instigators thereof, and actors therein, had been visited with the punishment due to their heinous offences; and that the Governor was certified that the inhabitants of the district lately in rebellion were desirous to return to their allegiance.

Whether or not, in this view, the Secretary of State had not misinterpreted, or interpreted too strictly, the expressions alluded to, which it is obvious could never have been intended to bear such an interpretation, may be apparent upon a perusal of the despatches and letters which were passing at the time, and to which, as the Secretary of State did not advert to them, it is probable his mind was not at the moment directed. The Secretary of State went on to observe:—

"You have justly observed, how much easier it is to decide such questions after than before the event, and that sometimes the success of the measures adopted for the prevention of an evil deprives the authors of those measures of the evidence they would otherwise have had of their necessity. Yet, upon a full review of all the circumstances of the case, her Majesty's Government cannot but agree with the conclusion of your report, 'that by the continuance of martial law in its full force to the extreme limit of its statutory operation, the people were deprived for longer than the necessary period of the great constitutional privileges by which the security of life and property is provided for.' They also agree with you that *if not* from the date of the apprehension and execution of Bogle, *at least from the time at which the reinforcements from Nassau and Barbadoes had arrived*, and the amnesty was proclaimed, 'there could have been no necessity for that promptitude in the execution of the law which almost precluded a calm inquiry into each man's guilt or innocence;' and that 'directions might and ought to have been given, that courts-martial should discontinue their sittings. The prisoners in custody might well have been handed over for trial by the ordinary tribunals.'

"It may, indeed, be admitted that, as you have said, *the Government would have incurred a serious responsibility if, with the information before them, they had thrown away the advantage of the terror which the very name of martial law was calculated to inspire*; but it appears from the summary of the sentences by courts-martial appended to your report, that the numbers executed must have included many who were neither ring-leaders of the insurrection nor participators in actual murder or outrage of the like atrocity; while for the wholesale flogging and burning of houses, the circumstances of the case do not appear to furnish any justification. Future good government is not the object of martial law. Example and punishments are not its objects: its severities can only be justified when and so far as they are absolutely necessary for the immediate re-establishment of the public safety.

As to this it may be observed, that the Secretary of State had either altogether misunderstood the Governor in supposing him to mean that "future good government" was to be provided for by martial law; or was merely giving expression to a general sentiment which no one would dispute, and which did not help the determination of the question:—

"Her Majesty's Government had learnt rather with regret than with surprise, as the result of your careful examination of the proceedings, that while in the great majority of the cases the evidence seems to have been

unobjectionable in character, and quite sufficient to justify the finding of the court, and the account given by the more trustworthy witnesses as to the manner and deportment of the members of the courts was decidedly favourable, yet you have been compelled also to call attention to some cases in which either the finding or the sentence was not justified by the evidence appearing on the face of the proceedings ; and to other cases, of which the evidence allowed to be given was of a most objectionable description ; and again to others, in which the sentences seemed to have been wholly disproportioned to the offences charged."

But here the Secretary of State forgot the important qualifications which the Commissioners had carefully given to their statements ; and especially had forgotten that in very few instances were they applied to capital cases, and that they carefully excluded the supposition that they necessarily implied the innocence of the parties.

Neither did the Secretary of State either refer to any observations of the Commissioners to show that the Governor was responsible for these things, nor offer any of his own, to reconcile that assumption with the instructions to colonial governors.

"Her Majesty's Government are compelled to express their concurrence in your last conclusions, viz. :—

"That the punishments inflicted were excessive.

"1. That the punishment of death was unnecessarily frequent.

"2. That the floggings were reckless, and at Bath positively barbarous.

"3. That the burning of 1,000 houses was wanton and cruel."

But here again the Secretary of State did not observe that the utter generality of these statements left entirely open any question as to the responsibility of any particular person ; and that as to this, their more particular statements not only showed no ground for imputing these excesses to the Governor, but on the contrary clearly showed that they were *not* to be imputed to him :—

"Her Majesty's Government have arrived at this conviction with the deepest concern. They are desirous of recognising every consideration which can extenuate the condemnation it necessarily involves. But their principal anxiety must be to prevent the recurrence in any future case of

proceedings like those which they now deplore. It appears to them to be evident that, even in the first excitement of the disturbances, and still more at some later period if martial law was allowed to continue, instructions ought to have been issued to the officers to whom the actual conduct of the operations was entrusted, which would have rendered such an abuse of power impossible. They agree entirely in the words which you have used, that 'much which is now lamented might been avoided if clear and precise instructions had been given for the regulation of the conduct of those engaged in the suppression, and every officer had been made to understand that he would be held responsible for the slightest departure from those instructions.' It does not seem reasonable to send officers upon a very difficult, and perfectly novel, service without instructions, and to leave everything to their judgment."

Strangely enough, the Secretary of State forgot that these were the words of the *Commander-in-chief*!

Yet here it will be observed that the Secretary of State evidently holds the Governor responsible for the whole execution of martial law, as well as its continuance; and that his censure or disapproval rested entirely on the execution; including especially the whole conduct of the trials by courts-martial—all of which, as shown by the despatches and the documentary evidence, took place entirely under military control. Nevertheless, he says—apparently with reference to the Governor—that instructions more particular should have been given to the officers. He had the candour, however, to add:—

"I think it is due to Mr. Eyre that I should accompany this observation by the statement that, in the instructions to colonial governors, no reference is made to the possible occurrence of such an emergency as that in which he was placed. How far it may be possible to frame general instructions which might assist the governor in the case of future disturbances arising in any colony, is a subject which will receive careful consideration at the hands of her Majesty's Government."

And he also observed:—

"It appears that Mr. Eyre was only very generally informed of the measures actually taken. In his first despatches in reply to my inquiries, he said that whilst all the general arrangements for the suppression and punishment of the rebellion were made under his immediate direction, the subordinate details, and the internal management of the districts under

martial law, including the appointment of courts-martial, the trial of prisoners, the approval of sentences, and the carrying out of such sentences, rested entirely with the military authorities, were reported to the General in command, and only partially came under his own notice in a general manner; and in his despatch of April 5, he further says: 'Having been personally present in the eastern district up to 20th October, and considering that one of the chief grounds stated for the appointment of a commission of inquiry was an allegation of excessive and unlawful severity, I think it right to mention that no such cases came under my own observation, nor were any brought to my notice, or any complaints made to me against the officers in command during the whole period of martial law;' and he then proceeds to relate instances in which abuse had subsequently come to his knowledge, and in which he had taken measures for punishment or for inquiry. With respect to the measures of severity to which I have above referred, you have not imputed, and her Majesty's Government do not impute, to Mr. Eyre any personal cognizance, at the time, of those measures; but they feel strongly that, when a governor has been compelled to proclaim martial law, it is his bounden duty to restrain within the narrowest possible limits the severities incident to that law, and for that purpose, to keep himself constantly informed of what is taking place under it. In the first alarm of such a disturbance, it cannot be expected that it will be possible for him to restrain all persons, acting under martial law, within the bounds which his own discretion would prescribe; but if it were deemed necessary to continue martial law, it was the duty of the Governor to inform himself of the character of the proceedings taken, and to put an end to all proceedings which were not absolutely necessary, and therefore justifiable on the ground of necessity. Her Majesty's Government cannot, therefore, hold the Governor of the colony irresponsible, either for the continuance or for the excessive severity of those measures."

It does not appear whether the Secretary of State had in his mind, when he thus wrote, that part of the instructions to colonial governors which expressly leaves matters of detail to the military commander; or those passages in the despatches in which the utmost jealousy was shown by the Commander-in-chief as to any interference with his authority: or the numerous communications in the Blue Book, which showed that the Governor at the time was harassed by the anxieties and alarms of the whole island, while the Commander-in-Chief was quietly at head quarters, with nothing but the control of the military to

attend to. Neither did the Secretary of State appear to remember the suggestion sent by Mr. Eyre to the Commander-in-chief that death should be inflicted only when deserved, and flogging never where it could be avoided. All this was ignored.

The Secretary of State then went on to deal with the case of Gordon; in which, it will have been observed, the Governor had taken no part whatever beyond this, that at the suggestion of the Commander-in-chief and others, he had caused Gordon to be arrested and taken to the declared district with instructions to the military commander to examine into *the evidence, to see if it was sufficient*, and if so, and if he considered it proper to try him by court-martial, to do so (Evidence of Colonel Nelson, Minutes of Evidence, pp. 622—625.) And that at the suggestion of the Commander-in-chief, who said he thought it a “case for prompt and decided action,” and had confirmed the proceedings, Mr. Eyre had allowed the execution, or to speak more correctly, had not prevented it, by the exercise of the prerogative of mercy. The Secretary of State wrote as to this case:—

“In his first despatch Governor Eyre directed the especial attention of her Majesty’s Government to the case of Mr. Gordon, who had been arrested at Kingston, where martial law did not prevail, had been carried to Morant Bay, tried by court-martial at that place, condemned and executed. To all the circumstances of this case you have given great attention, and have reported your opinion that, ‘the evidence,’ oral and documentary, appears to be wholly insufficient to establish the charge upon which the prisoner took his trial.’ In this conclusion her Majesty’s Government concur. They have weighed the words in which you convey your deliberate and carefully-formed opinion upon the true explanation of Mr. Gordon’s conduct.”

That is to say, the Secretary of State adopted the explanation taken by them from *Gordon’s own account* of himself. It is manifest that the Secretary of State had not observed that the Commissioners had, while reporting that the evidence was insufficient to sustain the charge, clearly

shown by the other statements that what they meant was merely this, that the accused had not been privy to a design for a massacre on that particular occasion ; but that he was guilty of inciting to massacre, that is, that he was guilty on the real substantial charge, and that their finding in his favour was a mere formal and technical acquittal. It has already been shown that this was the effect of their finding, but the Secretary of State evidently had not observed it. The Secretary of State went on to deal with the case of Gordon. Adverting to the point he had originally, it is conceived erroneously, taken as to the removal into the declared district, he had the candour to acknowledge that as the Governor could have avoided the objection by a mere stroke of the pen, it was, even if well grounded, a formal rather than substantial objection, though even now he had not, it should seem, detected the fallacy of supposing that an arrest out of the district and removal into it was any exercise of martial law out of the district, or that the trial of a man there, for inciting to rebellion there, was any undue extension of martial law.

“ Her Majesty’s Government do not forget that the Governor had it in his power, and would have exercised that power, to issue a proclamation, if he had thought it necessary to do so, before arresting Mr. Gordon. They have duly weighed the reasons which he has assigned for the course which he pursued, namely, ‘that, considering it right in the abstract, and desirable as a matter of policy, that whilst the poor black men who had been misled were undergoing condign punishment, the chief instigator of all the evils should not go unpunished, he at once took upon himself the responsibility of the capture ; and that, having seen the proceedings of the court, he concurred both in the justice of the sentence, and in the policy of carrying it into effect, regarding it as absolutely necessary for the future security of Jamaica, that condign punishment should be inflicted upon those through whose seditious acts and language the rebellion had originated.’ But it is evident that such considerations ought to be admitted with great hesitation. If lightly accepted, they would be liable to great abuse, and cases like the present, instead of being regarded as warnings, might become precedents for future action.

“ In the present case, not only has the necessity of the course adopted not been proved, but it appears from the evidence of Mr. Westmoreland,

one of the executive committee, that he suggested at the time that Mr. Gordon, who had been placed on board the 'Wolverine,' should be reserved for trial by a regular tribunal, with all the means of defence which are secured by the ordinary process of the law to every subject of the Queen. This would have been the proper course. Considerations of public safety justified the arrest of Mr. Gordon. His removal on board the 'Wolverine' would have been judicious; but his trial and execution by virtue of the sentence of that court are events which her Majesty's Government cannot but deplore and condemn."

It is probable that, when writing this, the Secretary of State did not remember that the Commander-in-chief, who had originally suggested the trial, approved of the proceedings, and after *reading them to two members of the Executive Council*, who also concurred, sent them, approved to the Governor, and wrote to the Horse-Guards that he entirely concurred. And not only so, but had afterwards admitted that he was of opinion "the case required prompt and decisive action" (Evidence of General O'Connor, Minutes of Evidence), the active leaders being at large, *and the insurgents in the field against the troops* at the very time. This is all ignored by the Secretary of State, while as to the isolated suggestion of *one* member of the council which he relies upon, a mere hasty suggestion, just thrown out, not pressed at all (Evidence of Westmoreland, Minutes of Evidence, p. 880), *that very member was one of those who, afterwards, with the other members of the council, and the Commander-in-chief, concurred with the Governor and the military commanders!* So that the preponderance of opinion and advice was enormously in favour of the execution, and it is difficult to see the force of the Secretary of State's view, that because one member of the council hastily suggested a civil trial by special commission, therefore there was no case of necessity.

The Secretary of State in conclusion stated :—

"I have communicated copies of your Report, with the Appendix, to the Secretary of State for War, and to the Lords Commissioners of the Admiralty, who are the proper judges of the conduct of the military and

naval officers engaged in these transactions. On my own part, I have to request that you will cause careful investigation to be made in those cases of civilians which appear to require it, with a view to such further proceedings as may be requisite and just. It will not be desirable to keep alive in the colony the heartburnings connected with these lamentable occurrences, by any very minute endeavour to punish every act which may now be the subject of regret. But great offences ought to be punished. I rely on your Government to accomplish this necessary object, and shall expect to receive a full report of the measures which have been taken with that view. You will, of course, be very careful not to give certificates under the Indemnity Act, in any cases in which there is reasonable ground to question the propriety of giving them.

“Her Majesty’s Government are advised by the law officers of the Crown, that the effect of the Indemnity Act will not be to cover acts done, either by the Governor or by subordinate officers, unless they are such as (in the case of the Governor) he may have reasonably, and in good faith, considered to be proper for the purpose of putting an end to the insurrection, or such as (in the case of subordinates) have been done under, and in conformity with, the orders of superior authority, or (if done without such orders) have been done in good faith, and under a belief, reasonably entertained, that they were proper for the suppression of the insurrection, and for the preservation of the public peace of the island. *As regards all acts done by or under military authority*, Her Majesty’s Government are advised that *the proclamation of martial law*, under the Island Statute of 1844, *operated within the proclaimed district to give as complete an indemnity as the Indemnity Act itself*. But—1. For any acts done beyond the proclaimed district, the authority of the Act of 1844, and of the proclamation, is inapplicable. 2. Civilians who may have acted *bona fide* for the suppression of the rebellion, although without military authority, would have a protection secured to them by the Indemnity Act, which they might not obtain from the mere operation of martial law. 3. Under the Indemnity Act, the certificate of the Governor is conclusive for the protection of subordinates. I have already directed you, and your own judgment doubtless would have led to the same conclusion, how careful you must be in giving these certificates; and, with this precaution taken, her Majesty’s Government have determined that the Act of Indemnity ought to be left to its operation.”

This amounted to a distinct declaration by the Government on the authority of the law advisers of the Crown, who were then Sir Roundell Palmer, Sir R. Collier, and Mr. Hannen, afterwards Mr. Justice Hannen, first, that the declaration of martial law operates as a complete indemnity for all acts done in the district under military

authority, which of course included Gordon's trial and execution, as all the other trials and executions, all of which took place within the declared district, and by military authority, and of course this implied that the proclamation was legal, for an illegal act cannot give any legal immunity. Next that the indemnity would protect all acts by the Governor, even *out* of the district, such as he might reasonably and in good faith have considered proper for the purpose of putting an end to the insurrection, and all acts in or out of the district done under orders or even without orders, if done honestly and in good faith for that purpose. And lastly that acts not coming within these two heads were liable to prosecution. And the whole tone and tenor of the despatch, which imputed no wilful or personal misconduct to Mr. Eyre, appeared to imply that he would not be liable to any criminal prosecution.

The practical conclusion arrived at by the Secretary of State was the recall of the Governor, that is, of a Governor who, it was admitted, had in the main done rightly, and had not *personally* either ordered or allowed a single act of excess, but who, in the opinion of the Secretary of State, had, on matters necessarily more or less matters of opinion, acted on a wrong judgment. It was natural that such a recall should be couched in terms of the utmost delicacy.

"Finally, I have to express on the part of her Majesty's Government their sense of the promptitude and judgment with which Governor Eyre submitted to the late legislature the views which he entertained, and in which they so readily concurred, as to the expediency of effecting a decided change in the mode of government of the colony. Those views have been confirmed by the sanction of the Crown, and by an Act of the Imperial Parliament, and the new form of government is about to be established under the Governor who shall succeed you when you are relieved of your temporary duties. It remains, therefore, to decide whether the inauguration of the new government shall be accomplished by Mr. Eyre, or whether her Majesty shall be advised to intrust that arduous task to some other person who may approach it free from all the difficulties inseparable from a participation in the questions raised by the recent troubles. It will be

evident from what I have already said that her Majesty's Government, while giving to Mr. Eyre full credit for those portions of his conduct to which credit is justly due, are compelled, by the result of your inquiry, to disapprove other portions of that conduct. They do not feel, therefore, that they should discharge their duty by advising the Crown to replace Mr. Eyre in his former government; and they cannot doubt that, by placing the new form of government in new hands they are taking the course best calculated to allay animosities, to conciliate general confidence, and to establish on firm and solid grounds the future welfare of Jamaica. You will communicate to Mr. Eyre a copy of this despatch, and afterwards publish it in the colony, together with your report and its appendix."

The general result of the despatch was that the Government censured the ex-Governor for the continuance of the execution of martial law under military authority; and for the absence of instructions to the officers; and for approving the trial and execution of Gordon. But as to the first, it was overlooked that the execution of martial law was under military control; as to the next, that instruction to officers could only have been issued by military authority; and as to the last, that the Commissioners had in effect found that it was justifiable.

Moreover as to the continuance of martial law, the Secretary of State forgot the correspondence enclosed in the despatches, which showed that the continuance of martial law was owing to the inability of the Governor to induce the Commander-in-chief to assent to his policy, on the arrival of the reinforcements, which was the *distribution* of the troops, so as by their presence to enable him to dispense with martial law, it being considered by both of them that the execution of martial law must be continued *until* the troops were distributed.

And generally, as to the whole, as to the continuance of martial law, as to the non-issuing of particular instructions, and as to the trial and execution of Gordon, it was forgotten that the Governor had acted with the advice or concurrence of those best competent to advise him; especially the Commander-in-chief, and that it had been laid down by an eminent and experienced statesman then

at the head of the Government, Lord Russell, that a governor under such circumstances cannot do wrong if he takes the advice of those best competent to advise him, and especially of the Commander-in-chief, and acts upon that advice, which was said expressly of the *continuance* of martial law, and the trial and execution of prisoners. So that it came to this, that the Governor was recalled by the Government of Earl Russell for having taken the very course which Lord Russell had recommended him to pursue under such an emergency.*

With regard to the Governor's sanction of Gordon's execution, as to which the Secretary of State went upon the ground that the necessity for his prompt execution was not proved, he dwelt upon a suggestion said to have been made by a member of the Council, that he should be tried by special commission; but it appears from the evidence that this was a mere hasty observation in private conversation, while, on the other hand, it was overlooked by the Secretary of State that the Governor had in effect submitted the case to the military authorities, desiring the military commander to examine it, and if *there was sufficient evidence*, to prefer such a charge as *he* thought proper (Minutes of Evidence, p. 622); that the military commander examined the evidence, framed the charges, and reviewed the proceedings (Ibid.); and that the Commander-in-chief when he received them, read them over to two members of the Executive Council, one of them *that very member*, and then sent them to the Governor desiring their immediate return,

* It will be found on reference to the Ceylon case (see the Introduction), that this is really so. In that case Lord Russell laid it down that a governor ought not to be censured, who, on such an emergency, acted with the advice of his council. The Governor there, Lord Russell said, acted in concert *and with the advice of his Executive Council* in this respect, and that there was a preponderance of opinion in the council in favour of continuing martial law, and *the Major-General commanding the district above all was strenuous in advising that the operation of martial law should be continued*. And the Governor *was right to take the deliberate advice of his Executive Council*, of those who were *best acquainted with the colony*, and, with their advice, to continue martial law.

being (as he said) of opinion that the then *state of the colony called for prompt and immediate action* (Examination of General O'Connor, Minutes of Evidence, p. 628). And further, that Mr. Eyre having written at the time—

“I believe that, were condign punishment to fall only on the ignorant people who have been led into rebellion, and the educated coloured man who has led to it to escape, a very unfortunate impression would be produced upon the public mind, which, in the *present state of the colony, might lead to very serious results*. It is only by making it plain to the entire population that the guilty agitator and user of seditious language will meet the same punishment as the uneducated tools whom he misleads, that we can hope to check and put down the spirit of disaffection already so rife in the land, and which may at any moment occasion outrages similar to those which have occurred”—

the Commander-in-chief, in sending home a copy of this letter, had written that *he entirely concurred in it*; that is to say, concurred in thinking that if Gordon was not executed it might have very serious results in the then state of the colony; and that the spirit of disaffection might at any moment occasion outrages similar to those which had already occurred. All this was entirely overlooked by the Secretary of State; as also the *facts* on which this opinion was founded, viz., that the *active leaders of the insurgents were still at large*, rousing the negroes to continue the revolt; and that there was a mere handful of troops in the colony amidst nearly half a million of blacks.

With regard to the continuance of martial law, the Secretary of State admitted to the full extent the formidable *danger* which the Governor had to encounter:—

“In reviewing this painful portion of the case, the greatest consideration is due to a governor placed in the circumstances in which Governor Eyre was placed. The suddenness of the insurrection; the uncertainty of its possible extent; *its avowed character as a contest of colour*; the atrocities committed at its first outbreak; *the great disparity in numbers between the white and the black populations*; the real dangers and the vague alarms by which he was on every side surrounded; *the inadequacy of the force at his*

command to secure superiority in every district; the exaggerated statements which reached him continually from distant parts of the island; the vicinity of Hayti, and the fact that a civil war was at the time going on in that country;—all these circumstances tended to impress his mind with a conviction that the worst consequences were to be apprehended from the slightest appearance of indecision."

But he overlooked the fact that all the elements of danger, which he thus recounted, continued to exist until the termination of martial law :—

"The character of the rebellion, as a contest of colour, the great disparity in numbers between the white and the black populations, the inadequacy of the force at his command to secure superiority in every district"—

all these elements of danger continued to exist down to the last day of the actual continuance of martial law. For the mere cessation of actual outrage only showed the efficacy of the measures adopted to keep it down, not the absence of necessity for those measures, and therefore there was nothing to show that the thousands of active insurgents, and the myriads who surrounded them, and sympathised with them, in this contest of colour, had at all abandoned their design, while the disparity in number between the white and black population, and the inadequacy of the force at his command to secure superiority in every district, continued until the reinforcements not only had arrived, but had been distributed. As to this, as already noticed, the Secretary of State had overlooked the correspondence enclosed in the despatches, which showed that, through the opposition of the Commander-in-chief, the distribution was delayed, and that the reinforcements were not distributed, so as to secure superiority in every district, until the last day of the operation of martial law; that is to say, the 10th November, so that every element of danger which originally justified martial law continued to exist, and the Secretary of State had apparently overlooked that the scope of the Colonial Act was to allow

martial law during the continuance of *danger*. For it recited that :—

“The appearance of public danger—by invasion or otherwise—may sometimes make the imposition of martial law necessary, and then enacted ‘that it should not in future be declared or imposed but by the opinion and advice of a council of war, and that at the end of thirty days it should determine, unless continued with the advice of a council of war, and further, that the Governor should be authorised, with the advice of a council of war, in the event of disturbance or emergency of any kind, to declare any particular district under martial law.’” (Jamaica Statute Book, 9 Vict.)

So that it is manifest the intention of the Crown in sanctioning the Act was, that martial law should be continued for a month, *provided the danger should continue*, and the Secretary of State admitted that it *had* continued, but, entirely overlooking the scope of the Act, founded his disapproval of the continuance of martial law in operation upon the Governor’s statements as to the cessation of actual outbreak or of open rebellion :—

“On the other hand, however, it must be borne in mind that martial law, and the execution of capital sentences under martial law, continued for the full period of a month authorised by the Statute, although after the first few days of the insurrection no serious outrages were committed by the insurgents, nor was any resistance offered to the troops. As early as the 27th October, Governor Eyre wrote to me that on the 20th he had left Morant Bay, satisfied that the rebellion was got under; and, on the 30th, a fortnight before the actual expiration of martial law, it was formally stated in the Proclamation of Amnesty, that the wicked rebellion lately existing in certain parts of the county of Surrey had been subdued; that the chief instigators thereof and actors therein had been visited with the punishment due to their heinous offences; and that the Governor was certified that the inhabitants of the districts lately in rebellion were desirous to return to their allegiance.”

But here the Secretary of State evidently failed to observe that it was obvious the Governor was here speaking of *actual* outbreak, or of *open* rebellion; and that as to the recital of the amnesty, that he was *certified* that the inhabitants desired to return to their allegiance, that was

merely his hope or belief, the proof of which would be the *surrender* of the insurgents, and accordingly the amnesty was *expressly made conditional upon such surrender*. It was obvious that the Secretary of State, overlooking the scope of the statute, had applied his mind exclusively to the continuance of resistance or of open rebellion, whereas the question upon the statute was one of *danger*, and the danger, in the view of the Governor, continued so long as all the elements of danger continued; and as long as thousands of insurgents remained at large in a district recently in *open* rebellion, and in which there was such an evident tendency to a war of races, and in a colony where the disparity of the numbers of the white and black populations, and the inadequacy of the force at his command, would render the *renewal* of actual outrage and insurrection before reinforcements were distributed, at once probable and formidable.

It is manifest that neither the Secretary of State nor the Commissioners had adequately understood the bearing of this matter of the *distribution* of the troops upon the question of the continuance of martial law. For *they did not even advert to it*. The Secretary of State, indeed, wrote that "at least from the *arrival* of the reinforcements" the operations of martial law might have been suspended. But the mere arrival was little, in the view of the Governor, until they were *distributed*. For it was their *presence* in remote districts, difficult of access, which kept the disaffected in awe, gave confidence and restored peace; and this, therefore, was the great object. The correspondence and the evidence showed his anxiety about it, and the controversy he had with the Commander-in-chief upon it. In his evidence, he showed that after the amnesty and up to the time of the cessation of martial law, he had urgent applications for troops for the protection of all parts of the island (Minutes of Evidence, p. 1012) from as many as ten parishes. The evidence also showed that these applications could not be acceded to until the reinforcements

arrived, and the correspondence showed that *when* they arrived there was a controversy between the Governor and the Commander-in-chief as to their distribution; the Governor urging it, and the Commander-in-chief being against it. This controversy took up some time, and it was not until the very day on which the actual operation of martial law terminated that the distribution of the troops was completed and the protection of the country assured. This was proved by many letters in the correspondence. Thus, on the 6th November the military commander wrote to the Commander-in-chief:—

“I have to report that the arrangements submitted to you for establishing permanent posts have this day been carried out. * * * I consider that in *this part* of the island every probability exists of perfect quiet being maintained. I consider the troops, posted as they are, will maintain order; and no reason prevails that the inhabitants should not return to their usual avocations. The negroes *are returning* to their work. The people who had fled on the commencement of the rebellion are returning to their homes.” (Parl. Papers, p. 1—192.)

That is, they were only returning four days before the close of martial law. Four days afterwards, on the 10th November, the Governor wrote to the Commander-in-chief:—

“I have to acknowledge the receipt of your letter, enclosing me a copy of General Nelson’s letter of 6th November, detailing the arrangements he had made to garrison the districts lately in rebellion.”

This was on the very day on which the exercise of martial law ceased. That is, it was not retained a *day* beyond the most pressing absolute military necessity. The Secretary of State never adverted to this most important matter, and censured the Governor for the continuance of martial law in operation. As the Secretary of State, however, grounded his disapproval of the continuance of martial law mainly upon one or two expressions of Mr. Eyre’s as to the rebellion being subdued in the districts

where it first broke out, it is important that it should be distinctly understood that in these expressions he was speaking of *actual* or *open* rebellion, and that the whole tenor and tendency of his communications down to the termination of martial law went to show that *rebellion* still continued, and that it would not be safe to discontinue the operation of martial law until the reinforcements were distributed. Thus, on the 10th November, having only on that day received information from the Commander-in-chief that the arrangements he had suggested for the distribution of the troops were completed, he wrote to the Admiral :—

“I am very thankful to say that the rebellion in the eastern parishes is effectually subdued and punished, and although much disaffection exists in most of the other parishes, I consider that so far as it is possible to judge we have *now a sufficient military force within the colony to protect it from any further serious outbreak, or to put it down should it take place*; consequently the troops arrived from Halifax are not now required, though I beg to be permitted in my own name and in that of the colony to thank most gratefully your Excellency and the authorities in Nova Scotia for the very prompt manner in which such a powerful force has been so generously dispatched to our assistance, and which, had the rebellion not been suddenly crushed in the district where it originated would certainly have been most urgently needed. I feel fully convinced that any delay or any reverse during the first few days would have led to the rebellion becoming universal throughout the whole island. We are *still in a very precarious position* as regards the disposition and possible conduct of the negroes, and though I think the troops brought from North America may be safely dispensed with, I consider that for some time to come the services of two men-of-war ought to be available for the purpose of frequently visiting every part in the island, and watching the course of events.”

So that, on the day before martial law virtually ceased, the Governor had only just obtained sufficient military force to protect the colony from any serious outbreak, or to put it down should it take place. And again, on the 14th November, the day *after* martial law formally terminated (it virtually ended on the 11th), he wrote to the Governor of a colony who had sent reinforcements :—

"I am happy to say that the rebellion is effectually crushed in the parishes where it broke out, but as a spirit of sedition and disaffection largely prevails in the other districts of the island, the greatest vigilance and precaution will be necessary for a long time to come, in order to prevent similar outbreaks taking place in those districts. The arrival of reinforcements from Nassau and Barbadoes prior to the coming of the 17th Regiment afforded me the means of forming military posts at many important points, and this, together with a large naval force now placed at my disposal by Sir J. Hope, will, I think, enable me to keep down any rising which might be contemplated.

"I do not, therefore, feel justified in detaining the valuable force so kindly sent by your Excellency, especially as I am given to understand that unless a very pressing necessity exists for its detention here its immediate return to the North American command is considered desirable. It is right to state that in coming to this decision *I am acting in opposition to the wishes and opinions of my constituted advisers*, and I am told of nearly all the members of both branches of the legislature also, most of whom are very anxious that the 17th Regiment should be retained in Jamaica."

So that, even after martial law had terminated, the Governor's advisers deemed the military force in the colony insufficient for its protection. In the face of these and a number of similar documents *written at the time* (some of which have already been given in the earlier portion of this work) in the face of documents written at the time, and which clearly showed that what the Governor meant, when he had said the rebellion was subdued was merely that the *outbreak* was subdued, or that it was subdued *where it first broke out*, the Secretary of State, on the strength of one or two isolated expressions, condemned the Governor for the continuance of martial law in operation, although everyone of the authorities believed that, down to the time when martial law stopped, the colony remained in the most imminent danger; and the scope and object of the Colonial Act was to allow martial law as long as the danger continued.

There is strong reason upon the face of the Secretary of State's despatch to believe that he arrived at his decision upon an entirely erroneous view of the law—that is, of the

effect of the colonial statute; and, beyond all doubt, if he took the right view of it—viz., that its great object was to allow of the exercise of martial law during the continuance of *danger*—he did great injustice to Mr. Eyre, in entirely ignoring the main ground on which he acted, and the facts on which it was supported. It can equally be shown, from the terms of the Secretary of State's despatch, that he had entirely *misunderstood* Mr. Eyre's ground, for he wrote:—

“Future good government is not the object of martial law. Example and punishment are not its objects: its severities can only be justified when, and so far as, they are absolutely necessary for the immediate re-establishment of the public safety.”

Now neither Mr. Eyre nor any one else had ever suggested that future good government was the object of martial law; that is, *after* the entire subjugation of rebellion and restoration of peace and confidence. Neither had anyone suggested that “example and punishment” were its *objects*, but its *means*; that is to say, that those deterrent measures which are of the essence of ordinary law, are *à fortiori* necessary in a time of extraordinary emergency, when the powers of ordinary law are too weak for the restoration of peace and confidence. If the Secretary of State meant to dispute that these deterrent measures were allowable *at all*, he should have said so distinctly; and it would have been quite inconsistent with the whole tenor of his despatches, which implied their legality. If he thought, on the other hand, that Mr. Eyre had upheld the prolongation of these measures after danger had ceased, he entirely misunderstood Mr. Eyre. If he meant that in *fact* these measures had been so prolonged, it is to be regretted that he entirely ignored the facts and documents upon which Mr. Eyre's defence was founded, and which clearly showed that the danger continued down to the last day of the continuance of martial law.

It is but too manifest that, so far as the recall of the Governor proceeded upon the continuance of martial law, it proceeded on an entire misapprehension of the law, an entire misapprehension of the facts, and an entire misapprehension of the grounds or reasons upon which he had acted.

So as to the control of martial law, and the alleged excesses, the despatch shows that the censure of the Governor proceeded upon entire misapprehension on the part of the Secretary of State.

With respect to the non-control of the execution of martial law, it is to be observed that the Secretary of State distinctly admitted that the Governor could not be held responsible for the acts of the military during the first heat and excitement of such a rebellion, and confined his condemnations to the latter portion of the period of the continuance of martial law. But he utterly overlooked that, according to the Report of the Commissioners, the excesses were almost entirely in the *former* period :—

“It appears that Mr. Eyre was only very generally informed of the measures actually taken. In his first despatches in reply to my inquiries, he said that whilst all the general arrangements for the suppression and punishment of the rebellion were made under his immediate direction, the subordinate details, and the internal management of the districts under martial law, including the appointment of courts-martial, the trial of prisoners, the approval of sentences, and the carrying out of such sentences, rested entirely with the military authorities, were reported to the General in command, and only partially came under his own notice in a general manner ; and in his despatch of April 6, he further says : ‘Having been personally present in the eastern district up to the 20th October, and considering that one of the chief grounds stated for the appointment of a commission of inquiry, was an allegation of excessive and unlawful severity, I think it right to mention that no such cases came under my own observation, nor were any brought to my notice, or any complaints made to me against the officers in command during the whole period of martial law ;’ and he then proceeds to relate instances in which abuse had subsequently come to his knowledge, and in which he had taken measures for punishment, or for inquiry. With respect to the measures of severity to which I have above referred, you have not imputed, and her Majesty’s Government do not impute, to Mr. Eyre any personal cognizance at the time of those

measures ; but they feel strongly that when a Governor has been compelled to proclaim martial law, it is his bounden duty to restrain within the narrowest possible limits the severities incident to that law, and for that purpose to keep himself constantly informed of what is taking place under it. *In the first alarm of such a disturbance it cannot be expected that it will be possible for him to restrain all persons acting under martial law within the bounds which his own discretion would prescribe ;* but if it were deemed necessary to *continue* martial law, it was the duty of the Governor to inform himself of the character of the proceedings taken, and to put an end to all proceedings which were not absolutely necessary, and therefore justifiable on the ground of necessity. Her Majesty's Government cannot, therefore, hold the Governor of the Colony irresponsible either for the *continuance* or for the excessive severity of those measures."

The Secretary of State here overlooked that out of 439 deaths inflicted 354 were inflicted by sentence of court-martial, as to which the Commissioners had reported that,—

"In the great majority of the cases, the evidence was unobjectionable in character, and quite sufficient to justify the findings."

And that they only specified three or four cases in which the evidence which appeared on the proceedings was insufficient ; and about half-a-dozen cases, in which the sentence appeared disproportionate to the offence. And that even in these few cases they carefully guarded against its being supposed that the men were innocent ; so that, out of 354 persons thus executed under sentence of court-martial, the Commissioners in effect reported that all but a very few were *proved* to have been justly executed, and that the others *may* have been so. And the remaining eighty-five were put to death during the first heat of pursuit, for the most part by soldiers in the absence of their officers, and for those the Secretary of State admits the Governor could not be held responsible. So that, for the period when there were serious excesses he was not responsible, and for the period when he was responsible there were no serious excesses. Such is the effect of the Report. And the Secretary of State, in order to make any case

against the Governor, enumerates the cases which the Commissioners mentioned as *exceptions*, but which he states as if they were instances or illustrations. But it appears to have escaped the attention of the Secretary of State that the Governor might fairly enough presume that able and experienced military commanders would take care that the proceedings of the courts-martial were properly conducted, and that, as it was proved that on the whole they *had* done so, it was hardly just to hold the Governor responsible for some mere isolated instances, which were only exceptions from the general rule. And it does seem remarkable that, although in two out of the three periods of censure—the execution of Gordon and these isolated instances of excess—the military commanders were far more *directly* concerned than the Governor, and on all three he acted in accordance with their views, he *alone* should have been selected for censure and recall! It is to be observed again, that the Secretary of State evidently confused the two questions of the *continuance* of martial law and its *control*, whereas they were essentially distinct. For the former, the Governor would be responsible, although not only justified in acting, but *bound* to act, upon the advice of his council and especially the Commander-in-chief. For the *execution* of martial law, he would not, it is admitted, be personally or directly responsible. And as to the continuance of martial law, he would be *entitled to presume that it would be properly carried out*; and the question ought to have been considered upon the assumption that it *was* so carried out. On the other hand, in considering the *execution* of martial law, it ought to have been assumed that it was rightly *continued*. And, it may be added, that it never appears to have occurred to the Secretary of State that the idea of continuing martial law, but not continuing it in *operation*, had never occurred to any one at the time, and was a mere afterthought of the Commissioners. Further, the Secretary of State never appears to have adverted

to the fact upon which the defence of the Governor for continuing martial law in operation appears to have been mainly founded, viz., the large number of the insurgents, most of whom remained at large, and the imminent danger of a renewal of outbreak before the reinforcements arrived, and the consequent necessity for the continuance of deterrent measures until the reinforcements had arrived and had been distributed. The Secretary of State does not appear to have adverted to the despatch of Mr. Eyre which he wrote while the Commissioners were sitting.

With reference to this part of the case the most manifest injustice was done by the Secretary of State to the Governor, through an obvious misapprehension of a passage in the Report. The Commissioners said :—

“We think that much which is now lamented might have been avoided, if clear and precise instructions had been given to those engaged in the suppression. * * * It does not seem reasonable to send officers on a very difficult and novel service without any instructions, and to *leave everything to their judgment.*”

Now in this passage it is evident that the Commissioners were alluding to the *Commander-in-chief*, for the last words are quoted from a memorandum of his sent to one of the officers :—

“The Major-General can give you no instructions, and *leaves all to your judgment.*” (Letter of Major Elkington, A.D.C., Minutes of Evidence, p. 1120.)

The Secretary of State, however, evidently applied the censure to the *Governor*, for in his despatch recalling him he wrote :—

“It appears to the Government that instructions ought to have been issued to the officers. * * * They agree entirely with you that it does not seem reasonable to send officers on a novel and difficult service, and *leave all to their judgment.*”

So that here it is quite evident that the Governor was censured and recalled for a fault (if it were one) of the

Commander-in-chief. Mr. Eyre, in his evidence, had stated that he gave no instructions as to the mode of carrying out martial law, announcing that the supreme authority was in the Commander-in-chief. (Minutes of Evidence, p. 82.) The Attorney-General of the colony gave evidence to the same effect. (Ibid.) The Commander-in-chief all through took the same view, and was extremely jealous of his authority, and issued such instructions as he thought right to the officers. Moreover the correspondence showed that there had been controversy between the Governor and Commander-in-chief even as to the right of the former to direct the *distribution* of troops; and the utmost that the Governor could venture to maintain, according to the Colonial Regulations which he quoted, was to issue orders for the march and *distribution* of troops, "and *generally* for such military service as the safety of the colony appeared to require." The details, even as to distribution, were for the Commander, and he never ventured upon any control as to the conduct of the officers in the field, nor even in the conduct of courts-martial. On the contrary, the evidence and the correspondence clearly showed that, even as to the latter, the military commanders considered them to be entirely under their control; for it appeared that in several instances in which the Governor had decreed certain parties to be tried by court-martial (provided the evidence was sufficient), *they* determined, upon their own responsibility, *not* to try them, and declined to do so. Nothing, therefore, is more clear than that the Governor had *no power* to issue precise instructions to the officers; and that, so far as this matter went, he was recalled for a fault of the Commander-in-chief, or, at all events, for a fault which was not his own.

Nor is this the only matter on which it can be shown that the Secretary of State arrived at his decision under complete misapprehension. He was entirely in error as to the alleged excesses, so far, at all events, as related to the

trials by court-martial during the latter part of the duration of martial law, for which alone it was admitted Mr. Eyre was responsible. The Secretary of State wrote to the President of the Commission:—

“It may, indeed, be admitted that, as you have said, the Government would have incurred a serious responsibility, if with the information before them, they had thrown away the advantage of the terror which the very name of martial law was calculated to inspire; but it appears from the summary of the sentences by courts-martial appended to your Report that the numbers executed must have *included many* who were neither ring-leaders of the insurrection, nor participators in actual murder or outrage of the like atrocity.”

This appears to imply that only such offenders would properly be punished with death; but this is *entirely contrary to the Report of the Commissioners*, which stated:—

“In the *great majority of cases*, the evidence seems to have been unobjectionable in character, and *quite sufficient to justify the finding of the court.*”

And though the Commissioners added—

“We think it right to call attention to cases in which either the finding or the sentence was not justified by any evidence appearing on the face of the proceedings”—

they only mention *three* cases, in which they state the evidence was insufficient (3 out of 354!). They go on, indeed, to state other cases; but carefully refrain from stating that the evidence was not sufficient.

“It appears also from the proceedings that one person was executed upon proof that he *was advising the rioters* on the 7th of October how to act, and that he resisted the police, and insisted in handcuffing them on the 10th. Another on proof that he *had resisted* the police on the 10th, *having in his hand a cutlass* and big stick, and that he had made use of the following expression:—‘You were taking my name down on Saturday, now I can take my revenge. If we did not consider one thing we would take your head off.’ Another for having assisted in rescuing Geoghegan on the 7th, and for having been one of the party who came down with a drum.”

It is evident that these men were *parties* to armed rebellion; and the Commissioners do not say that such offenders ought not to have been capitally punished. The Secretary of State appears to imply this; and that only ringleaders or participators in actual murder ought to have been executed. One of two things is manifest, either that the Commissioners did not think so, or that the number of other offenders executed was very small; and in either view the statement of the Secretary of State that "many" had been executed who ought not to have been, is not borne out by the Report, especially as the Commissioners are careful to add that in some cases there was *evidence which did not appear upon the proceedings*. And in several cases where they state that the evidence was improper, they do not state that, however irregular, it was insufficient, or had been ascertained to be untrue; nor in one single instance do they state that a person executed was innocent.

And, further, it is most remarkable that though they continue to state—

"In other cases the sentences seem wholly disproportioned to the offence charged"—

all the cases specified are cases of mere flogging and imprisonment—not one is a capital case; while, as regarded the flogging, as already mentioned, they showed that the excess was unauthorised, and for the most part under the orders of civil magistrates. And all the instances of reckless inflictions of death were in the first heat of pursuit, at a period when, as the Secretary of State admitted, the Governor was not responsible. Moreover, it appeared by the evidence that the Governor had expressly written to the Commander-in-chief—

"I am of opinion that all prisoners should as rapidly as possible be tried, and that all those who are *not deserving of death or flogging*, be released. It is not desirable with our over-crowded jails to sentence prisoners to im-

prisonment, nor would I advise that flogging should be resorted to more than can be helped." (Despatch of Mr. Eyre to General O'Connor, October 26.)

So that it had been the expressed direction and desire of the Governor that neither the punishment of death nor flogging should be inflicted, *except where it was deserved*. If either punishment *had* been so inflicted in cases where it was not deserved, it was in direct violation of his restriction; and therefore he could not be responsible. Nevertheless, without adverting to any of these matters, the Secretary of State went on to write thus of the Governor:—

"Her Majesty's Government have learnt, rather with regret than with surprise, as the result of your careful examination of the proceedings, that while in the great majority of the cases, the evidence seems to have been unobjectionable in character, and quite sufficient to justify the finding of the court, and the account given by the more trustworthy witnesses as to the manner and deportment of the members of the courts was decidedly favourable, yet you have been compelled also to call attention to some cases in which either the finding or the sentence was not justified by any evidence appearing on the face of the proceedings; and to other cases, in which the evidence allowed to be given was of a most objectionable description; and again to others, in which the sentences seem to be wholly disproportioned to the offences charged."

The Secretary of State here altogether omitted to observe that the Commissioners had only stated *three* cases in which they thought the evidence insufficient to justify the finding, and *three* capital cases in which they seem to suggest, though they do not state, that the infliction of death was not justified by the finding; and that, though they mention several cases in which the evidence was irregular and improper in character, they do not mention one in which it was not sufficient in amount, supposing it true, or had been proved to be untrue; and that they do not state a single case of capital punishment in which they say the punishment was disproportionate to the offence charged, or that the party was innocent. And, lastly, the Secretary of State wholly failed to observe that if there

had been any infliction of death or flogging, not deserved, *it was entirely contrary to the express directions of the Governor*. It is for the reader to judge whether the premises laid down were sufficient to ground a censure on the Governor.

It is obvious that the Secretary of State had arrived at his decision on a very imperfect and incomplete view of the case, and one which entirely ignored the main ground of Mr. Eyre's defence, namely, the continuance of *danger*. Indeed, from the manner in which, throughout, the Secretary of State dwelt upon actual resistance and open rebellion, it is very manifest that it never occurred to him that the scope of martial law—at all events under the Statute—was *danger*; and that, therefore, Mr. Eyre was condemned upon an entirely wrong view of the case, both as to the facts and the law.

It may be convenient, before coming to subsequent proceedings, to give Mr. Eyre's defence of himself against the several heads of charge upon which he had been recalled, as conveyed in his answer to an address to him which embodied the opinion of the whole white population of the colony. The address, signed by above twelve hundred gentlemen, was in these terms—and let it be borne in mind that the opinion of the whole English population of the colony must have considerable weight, except with those persons who, by partisan feeling, are so prejudiced as to regard their fellow-countrymen abroad as unworthy of all respect :—

“We rejoice that after a searching inquiry, the Royal Commissioners have reported to her Majesty, ‘that praise is due to your Excellency for your skill, promptitude, and vigour in the recent insurrection; and that to the exercise of such qualities by you, its speedy termination is to be attributed;’ and we heartily congratulate your Excellency, that there has been evinced, both in this country and abroad, a general approbation of your conduct, in having saved a colony to the Queen, and homes and lives to the Queen's subjects in this her Island of Jamaica.

“It is our firm conviction that a more intimate acquaintance on the part of the Imperial Government with the local affairs of the colony, and its

condition, as well as with the true nature of events which had endangered, and might continue to threaten, the peace and welfare of the country, would have shielded from censure a faithful servant of the Crown.

"We nevertheless feel assured that when political passions shall have given place to reason and justice, the vast majority of your fellow-subjects and others interested in the maintenance of public safety and order, will consider that any officer who (*unaided by any instructions from superior authority, in times of extreme and sudden difficulty and very grave national peril*), has on the whole, done his duty nobly and well, ought not for any minor error, or excess of his subordinates, to be otherwise than most favourably dealt with.

"We earnestly trust that a time will soon arrive when the momentous services which your Excellency has recently rendered to Jamaica, may meet with that distinguished reward, which Her Most Gracious Majesty the Queen so well knows how to confer on those whom she cannot doubt to be meritorious officers."

Mr. Eyre's answer was as follows :—

"It is only natural that, after serving my Queen and country zealously, and I hope not uselessly, for twenty-five years (since September, 1841), and after having had the honour of representing my Sovereign in both hemispheres as Lieutenant-Governor or Governor for nearly twenty years (since December, 1846), I should feel some pain and regret that my career should now be abruptly terminated by removal from public service, under the disapproval and censure of the Colonial Minister.

"But this pain and regret are greatly lessened by the reflection, that however able or impartial the parties may be by whom my conduct has been inquired into and adjudicated upon, it is impossible that persons imperfectly acquainted with the negro character, with the country, and with the circumstances which surrounded me at the time, can judge adequately or justly, after the event, of the necessity or propriety of the action I found it imperative to take under a great emergency.

"The points on which I am condemned are three :—

"First—For permitting the trial and execution of G. W. Gordon.

"Secondly—For continuing martial law and trials by courts-martial after the proclamation of the amnesty on the 30th October.

"Thirdly—For not being aware of the excesses committed under martial law, and for not issuing instructions which would have prevented these excesses.

"With regard to the first, I can only repeat my conviction, that however defective the evidence may have been in a strictly legal point of view, Mr. Gordon was the proximate occasion of the insurrection, and of the cruel massacre of particular individuals whom he regarded as his enemies, and that, therefore, he suffered justly.

"No impartial person can, I think, read the Report of the Royal Commissioners without coming to the same conclusion.

"The court before which he was tried was not a court of law, but it was a perfectly legal court.

"To have issued a special commission to try him was wholly impracticable at the time, whilst to have kept him as a prisoner for future trial would have had a very bad effect, and might have been dangerous in the extreme, in the excited and precarious state the country was then in.

"I believe that it was only through the firmness and decision of the Government in dealing with this case summarily that seditious teachings and the spread of the rebellion were checked.

"Indeed, in my opinion, the prompt trial and execution of G. W. Gordon had more effect in preventing further risings in other parishes than any of the steps taken by the Government.

"Mr. Gordon was regarded by the negroes generally throughout the island as an obeah-man is by his immediate neighbours, as all-powerful, and beyond reach of ordinary jurisdiction.

"His trial and execution removed this delusion, and showed that the authority of the Queen was supreme.

"Nor was he the only person of better position and education engaged in stirring up and exciting the negro mind.

"It was absolutely necessary that a stop should be put to this action, and it could only be done by the immediate trial of the chief agitator, and that trial could only take place by court-martial, under the then existing circumstances.

"With regard to the continuance of martial law, and of trials by courts-martial after the 30th October, it must be remembered that during the whole period for which martial law was in force, and for some time afterwards, the accounts daily received from the various parishes in the island, led the Government to believe the whole country to be still in a state of great excitement and peril, and that further risings amongst the negroes might take place at any moment, or in any direction; and although additional troops had arrived, the total number in the colony was still very insufficient to cope with anything like a general insurrection, or even to occupy and protect many districts at a time, had active military operations become necessary.

"It was essential to overawe the disaffected, known to be numerous in most parishes of the island.

"For this the continuance of martial law became requisite, and it was only by the continuance of the trials and punishment of those guilty of rebellion, that the existence of martial law would be believed in.

"But there were also no jails or prisons in which any large number of prisoners could be kept for future trial, and even had it been practicable, delay in dealing with persons charged with the more serious

offences committed during the insurrection would have had a most injurious effect in other parts of the colony, ripe as they also were for rebellion.

“With regard to the trials which thus took place before courts-martial after the most searching scrutiny which practised lawyers could institute—a scrutiny to which I believe proceedings under martial law were scarcely ever before subjected, and from which I venture to think that few would have come out with less of censure—the Royal Commissioners report: ‘In the great majority of the cases, the evidence seems to have been unobjectionable, and in character quite sufficient to justify the finding of the court. It is right also to state that the accounts given by most trustworthy witnesses as to the manner and deportment of the courts were decidedly favourable.’

“That the Government earnestly desired to show as much leniency as considerations affecting the safety of other parts of the island permitted, is evidenced by the early date at which an amnesty was proclaimed, under which large numbers of persons were absolved from the penalties of all lesser crimes, though the more serious ones were still for a limited time (prescribed by Act) to be dealt with by courts-martial.

“I may here state, that as soon as it was known that martial law was to terminate at the end of the statutory period of thirty days, I was waited upon by members of the legislature and custodes to urge upon me an extension of it, and I am quite certain that had I attempted to curtail the period which by law it had to run, consternation and apprehension would have been universal.

“Even after martial law had expired, and notwithstanding the very numerous trials which had taken place under it, a large number of prisoners charged with the graver offences committed during the rebellion still had to be dealt with, of whom very many were found guilty on trial before the special Commission, and were sentenced by a civil court, in some cases to death, in others to long terms of imprisonment.

“In reference to my not having been aware of the excesses committed during martial law, I would only ask, how was it possible that I, necessarily detained at the seat of government in anxiously watching over the interests, and providing for the safety of the island generally, as well as in attending to the laborious duties of a most important legislative session, could make myself acquainted with occurrences which even Brigadier-General Nelson, the able officer commanding in the districts where they were taking place, heard nothing of.

“Those who know anything of the nature of the country in Jamaica, and the few facilities which exist for inter-communication, will readily understand that at any time, but especially during the rainy season, which was at its height during the rebellion, it is physically impossible to learn or to control all that is going on throughout a tract of country as extensive as that occupied by our troops during martial law.

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“But the truth is that excesses must always take place under martial law, and especially when black troops, who are often wholly beyond the control of their officers, are employed. No one can regret these excesses more than I do. It is, however, upon those whose acts made martial law necessary, or upon those who, by not coming forward to uphold the Queen's authority and protect life and property, encourage such acts, that these excesses are chargeable, not upon the authorities who are compelled to resort to that stern remedy to put down or prevent the extension of rebellion.

“Did no excesses occur in repressing the Indian mutiny? Or were the authorities there made responsible for not knowing of or not preventing them?

“In that case it was not thought necessary, as it was here, to appoint a commission of inquiry to rake up and parade before the world every allegation of injury which an ignorant and excitable population, in many respects little removed from savages, whose habit is untruthfulness, and, vindictive at having been foiled in their recent rebellion, could be induced to bring forward, whether well or ill founded, against those who had the onerous and thankless task of putting down that rebellion.

“With regard to the non-issuing by me of instructions for the guidance of the military, I have only to point out that her Majesty's instructions to Governors lay down the rule, that it is the duty of the Governor to give all necessary orders for the march and distribution of troops, but expressly enjoin him to leave all details connected with the carrying out those orders to the military authorities.

“When martial law is proclaimed in a district the case is even still stronger, for then all civil jurisdiction is absolutely superseded, and the entire and sole management of the district so circumstanced becomes vested in the General in command.

“I have thought it right to make these observations, not to repudiate any responsibility properly attaching to me, or to excuse any shortcomings or errors in my own conduct, but as feeling it due to myself, to you, and to the British public, to state some few of the considerations which influenced me in reference to the particulars in which my conduct has been most strongly condemned.

“And I the more gladly make these statements to you, gentlemen, because from your having been in the colony at the time, and from your long and practised acquaintance with the country, the people, and the circumstances which existed during the period referred to, you are in a better position than any other person can be to judge of the value of them, and to know how far I did my duty to the colony and to my sovereign in the hour of difficulty and danger.

“Even the Royal Commissioners, labouring as they did under all the disadvantages of unacquaintance with the character of the country, the people, and the circumstances of the moment, and making their inquiries

after the event, from a people naturally untruthful, and stimulated by the impression sedulously instilled into them by designing persons that the Queen was on their side and desired to obtain evidence against and punish the authorities engaged in suppressing the rebellion,—even the Royal Commissioners, labouring under all these disadvantages, have been compelled to admit :—

“ ‘That though the original design for the overthrow of constituted authority was confined to a small portion of St. Thomas-in-the-East, yet that the disorder in fact spread with a singular rapidity over an extensive tract of country, and that such was the state of excitement prevailing in the other parts of the island, that had more than a momentary success been obtained by the insurgents, their ultimate overthrow would have been attended with a still more fearful loss of life and property,’ and they have very justly remarked that, ‘Sometimes the success of the measures adopted for the prevention of an evil, deprive the authorities of the evidence they would otherwise have had of their necessity.’

“ ‘Had I hesitated, there would have been evidence enough of this necessity ; but what would have been said of me for not having prevented the ‘still more fearful loss of life and property?’

“ ‘The Royal Commissioners and her Majesty’s Government have been pleased to give me credit for ‘skill, promptitude, and vigour,’ on the occurrence of a great emergency, and to state that ‘to my exercise of these qualities the speedy termination of the insurrection is due.’ I am told that I ‘showed myself superior to the feelings of alarm, expressed and entertained by those around me,’ and her Majesty’s Government further ‘express their sense of the promptitude and judgment with which I submitted to the legislature the views which I entertained, and in which they so readily concurred, as to the expediency of effecting a decided change in the mode of government of the colony ;’ views which have since been confirmed by the sanction of the Crown, and an act of the Imperial Government. Why should they not equally give me credit for having exercised sound judgment in the lesser matter of continuing martial law for a limited time after the proclamation of the amnesty, and although they, acting as my judges after the event, without the necessary local experience, and when the very success of my measures had deprived me of the evidence of their necessity, are unable to appreciate so clearly the force of the considerations which influenced me in this matter as they do in the circumstances which surrounded the commencement of the rebellion, or the changes effected in the constitution ?

“ ‘With regard to the case of Mr. Gordon, the Royal Commissioners labouring under the disadvantages already adverted to, and looking at the proceedings as lawyers naturally would do, that is in connection with the strict rules and practice of courts of law (though I have already shown, the court before which Mr. Gordon was tried was not a court of law, though a perfectly legal court) whilst expressing their opinion that they ‘cannot see

in the evidence which has been adduced, any sufficient proof (that is, I presume, according to the strict rules and practice of courts of law) either of his complicity in the outbreak at Morant Bay, or of his having been a party to a general conspiracy against the government,' yet distinctly record, 'We have formed the opinion that the true explanation of Mr. Gordon's conduct, was to be found in the account he has given of himself, "I have just gone as far as I can go, but no further. If I wanted a rebellion, I would have had one long ago. I have been asked several times to head a rebellion; but there is no fear of that, I will try first a demonstration of it, but I must first upset that fellow Herschel, and kick him out of the vestry, and the Baron also, or bad will come of it."'

"Mr. Herschel was not kicked out of the vestry nor the Baron upset, and these were two of the first victims of the insurrection.

"Again the Commissioners distinctly record their opinion:— 'Mr. Gordon might know well the distinction between a rebellion and a demonstration of it. He might be able to trust himself to go as far as he could with safety and no further, but that would not be so easy to his ignorant and fanatical followers.' They would find it 'difficult to restrain themselves from rebellion when making a demonstration of it. If a man like Paul Bogle was in the habit of hearing such expressions as those contained in Gordon's letters, as that the reign of the oppressors would be short, and that the Lord was about to destroy them, it would not take much to convince him that he might be the appointed instrument in the Lord's hand for effecting that end, and it is clear that this was Bogle's belief, as we find that after the part he had taken in the massacre at Morant Bay, he, in his chapel at Stoney Gut, returned thanks to God, that he had gone to do that work, and that God had prospered him in that work.'

" 'It is clear, too, that the conduct of Gordon had been such as to convince both friends and enemies of his being a party to the rising.'

" 'We learn from Mr. Gordon himself, that in Kingston, where he carried on his business, this was the general belief, as soon as the news of the outbreak was received.'

" 'But it was fully believed, also, by those engaged in the outbreak; Bogle did not hesitate to speak of himself as acting in concert with him.'

" 'When Dr. Major was dragged out of his hiding place, on the night of the 11th October, he saved himself by explaining that Mr. Gordon would not wish to have him injured; and when Mr. Jackson made a similar appeal for his own life to the murderers of Mr. Hire, it appears to have been equally successful.'

" 'The effect which was likely to follow the meetings which took place during the spring and summer of 1863, in some of which Mr. Gordon took a part, was foreseen by one of his most ardent supporters, who, writing to a common friend, on the subject of an article he had inserted in a newspaper respecting the Vere meeting, used these words, "All I desire is to

shield you and them from the charge of anarchy and tumult, which in a short time must follow these powerful demonstrations.’”

“Again the Commissioners report, ‘It appears exceedingly probable that Mr. Gordon, by his own words and writings, produced a material effect upon the minds of Bogle and his followers, and did much to produce that state of excitement and discontent in different parts of the island, which rendered the spread of the insurrection exceedingly probable.’ The British public may judge from these extracts from the Report of the Royal Commissioners, how far Gordon was morally guilty of causing the rebellion, and therefore justly punished, whatever may be the doubts entertained as to the proof of his complicity having been sufficient, in the strictly legal point of view, to satisfy a court of law, but they can never know the full weight and pressure of the circumstances, which made it necessary, in order to save the colony from the general massacre and pillage which further risings would have occasioned, to act promptly and decisively upon proof only of his moral guilt (and this be it remembered is all that is required before a court-martial under martial law).

“I am not a lawyer, but I understand there are legal gentlemen, of high ability, who dissent entirely from the opinion expressed by the Royal Commissioners, that there was not sufficient proof (that is, such as would be received in a court of law) of Gordon’s complicity in the outbreak at Morant Bay, and consider that the evidence adduced before the court-martial, taken in connection with concurrent circumstances, would have been both legally admissible in a civil court, and sufficient to satisfy a civil jury of his guilt.

“Be this as it may, I had myself no doubt whatever as to Gordon’s having occasioned the rebellion, of the danger to the colony, if his case was not promptly and summarily dealt with. Under such circumstances, it was impossible to hesitate as to the course which I considered my duty to the Crown and to the colony, made it imperative on me to take.

“I now retire into private life, dismissed from the public service after nearly a lifetime spent in it, but I have, at least, the consolation of feeling that there has been nothing in my conduct to merit it, nothing to occasion self-reproach, nothing to regret.

“On the contrary, I carry with me in my retirement the proud consciousness that at all times, and under all circumstances, I have endeavoured, to the best of my ability, to do my duty as a servant of the Crown faithfully, fearlessly, and irrespective of personal considerations.

“With such convictions, deeply as my removal from the public service must necessarily affect my future, and the interests of those most dear to me, I can submit to the forfeiture of position, to the sacrifice of twenty-five years’ career in the public service, or to any personal indignity entailed, counting my individual losses as utterly insignificant when so largely counterbalanced by the undeniable fact that the very acts which have led to my dismissal, have saved a noble colony from anarchy and ruin.

It will be observed that Mr. Eyre had alluded in a former despatch to an attempt made by the negroes to resist the law, even while the Royal Commissioners were sitting. What then took place was described by Sir H. Storks in a despatch to the Secretary of State, and quite confirmed the view taken by Mr. Eyre in the above letter as to the rebellious spirit of the negroes. And it was afterwards described thus in a despatch of his successor, when describing a similar attempt on the part of the negroes to resist the execution of the law, in relation to the same land. The case is remarkable as an illustration of those deep-seated feelings about the *land*, which were really at the root of the rebellion, and showed its formidable character.

“In the month of March last Sir Henry Storks had occasion to bring to the knowledge of your Lordship's predecessor a difficulty which had arisen with certain negro settlers on Hartlands, an abandoned estate in the neighbourhood of Spanish Town, of which the proprietor had determined to resume possession. It will be within your Lordship's recollection that these settlers resisted the surveyors who had been sent to run the lines of the property, and that *Sir Henry Storks deemed it necessary to send a force of 150 soldiers in support of the police, in order to enforce obedience to the law.* Further legal proceedings have since that time been taken by the proprietor to enforce his rights of possession, and finally judgment was pronounced by the court in his favour, and a writ of ejectment was issued against the settlers. This writ was entrusted to the Deputy Provost-marshal for execution. On his proceeding to Hartlands, on the 20th ultimo, to serve it, he was opposed by the settlers, and he thereupon returned to Spanish Town and reported the circumstance to the Government.

“I may here mention that the proprietor, Mr. Hart, had offered terms of compromise which appeared to me to be fair and considerate. He had surrendered about 500 acres of the estate on which the main body of the settlers are located, and for which there was more or less of evidence that some price had been paid by them ; and he had offered to allow the negroes living on other portions of the land, who, judging from the result of the legal proceedings, would seem to be nothing more than unauthorised squatters, to retain their houses and plots of ground, on signing written agreements acknowledging his proprietary rights, and agreeing to pay rent as his tenants. After the return of the Deputy Provost-marshal to Spanish Town, these settlers addressed to me a memorial. To this memorial I re-

turned an answer, pointing out to the settlers their legal position ; giving them clearly to understand that *the law would certainly be carried into execution by an adequate force*, and that any opposition to it would be useless, and would merely entail upon them personal pains and penalties, in addition to the loss of house and land.

In the result the people yielded, but the Governor added :—

“ A matter which has been the cause of a good deal of trouble and anxiety has thus been settled without any breach of the peace, and indeed without the actual employment of force on the part of the Government. This case affords, however, an illustration, if one were needed, of the necessity in this country for a strong and efficient police-force. Hartlands is within a few miles of Spanish Town, and I was therefore able to bring from Kingston a sufficient number of constables ; but *were a similar difficulty to occur in a distant part of the country, it might be impossible to collect a respectable force*, and the apparent weakness of the Government would be a direct encouragement to the negroes to resist the law.”

This defence of Mr. Eyre, although published in some of the journals of this country, had little effect in allaying the animosity which existed, and the agitation which had been excited against him ; from causes already cursorily alluded to in the Introduction, but which require here some more particular explanation.

It will be evident that some explanation is required of the remarkable state of facts which now presented itself. The first striking fact was that the only person dismissed and disgraced was the Governor, the only man, except the military commander, who, it is admitted, was, so far at least as his own acts or orders went, entirely blameless ; that is to say, had neither done, directed, nor *knowingly* ever allowed, any act which was wrong, and who, upon the whole, had, so far as he was concerned, done what was right, and with the *result*, it was admitted, of saving a colony. And he was recalled in fact for the faults of other persons not his own. The next remarkable fact was that the very party which clamoured most loudly for his recall, on the alleged ground of his having *allowed*, or rather not having *prevented*, an

excessive exercise of martial law, on the one hand, professed to regard its exercise as *wholly* unlawful; and on the other hand, heartily approved of its exercise with the most flagrant illegality and inhumanity, when it suited the purposes or the policy of their party.

For about this very time* martial law had *been by that very same party*, in another country, kept up for months, in districts where the ordinary course of affairs had never been disturbed, and for months after all war or rebellion had ceased, and had approved of the trial and execution of civilians, by order of courts-martial, for civil offences, and in some instances without an atom of evidence. Obviously, therefore, the reasons assigned by this party, as grounds for their animosity against the Governor of Jamaica were far from being the real ones, and their professed aversion to martial law was altogether affected; and some other reason must be sought for their conduct in this particular case.†

The same conclusion was pointed to by another equally remarkable fact, that this very party, while so relentless in their persecution, on account of alleged excesses, of a man who had never knowingly allowed a single one of them, showed the utmost apathy as regarded the actual perpetrators of the very worst atrocities which had been committed.

It will be manifest that for such gross and glaring inconsistencies there must be some most remarkable reasons, and those reasons will also afford an explanation of what otherwise would be painfully inexplicable—the utter disregard of truth in the accusations hurled by most eminent and estimable men against the unfortunate Governor, who, recalled and ruined as he was, they seemed to pursue with unrelenting rancour, and an unscrupulous

* See the article in the *Times* of January 8th, 1866.

† As the case of the black soldier who shot ten negroes.

animosity which no vengeance could satisfy, no amount of misery satiate; and in the whole pursuit they appeared to cast aside all restraints, not merely of truth but of decency, and to enter into a wretched rivalry with each other who should use the worst epithets, coin the vilest charges, or revel in the coarsest and most cruel calumnies. In a history of this remarkable case some explanation must be found for all this, and it will not be far to seek it and to find it.

It unfortunately happened, through a concurrence of unhappy circumstances, that the Governor had excited the animosity of one of the most powerful parties in this country, the abolitionist party, (of whose history and character some idea has already been given in the Introduction) and of one of the three great religious denominations, so closely associated with the others in that party; and these great parties, perhaps comprising the bulk and body of the middle classes in this country, (at all events the religious and more numerous portion of them), had managed to acquire the alliance of another party, not so powerful in numbers, but infinitely more so in intellectual influence—that of the political or philosophical Liberals. This result was a combination of forces almost irresistible, especially as they wielded or governed the influence of the most powerful journals in the country. The way in which all this had come to happen was this.

The abolitionist party, and the religious bodies of this country, are chiefly represented in the West Indies by the Baptists, and the English ministers or missionaries of that body, a respectable and well-meaning body of men, but deeply infected with the bitter spirit and narrow prejudices of the abolitionist party, had for some time become sensible of the deteriorated condition of the negroes, consequent upon the fatal mistakes caused by their narrowness and bitterness of spirit in the measure

of emancipation, and had been extremely anxious to throw the blame, if they could, upon some other causes— unjust legislation, excessive taxation, misgovernment, anything but what it was in the opinion of our ablest statesmen, viz., the deterioration of the negroes, consequent upon the fatal blunders of the emancipation measure. They had of late been instilling into the mind of the negroes the mischievous notion that they were suffering from injustice, instead of from idleness. A certain Dr. Underhill, no doubt an excellent and well-meaning man, a leading man among the Baptists, had acted in this country in furtherance of the views of their body in Jamaica, and with that object had written to the Secretary of State a letter filled with the most inflammatory statements, the object of which was to represent the negro as ill treated. Mr. Secretary Cardwell had sent this to the Governor for an answer, and he had sent it to the magistrates for the like purpose. The Secretary of State, upon receiving the answers, wrote an excellent despatch in which he earnestly advised the negroes to *work*, and not to be idle. This caused great offence to the abolitionists, who saw that the Secretary of State had hit the very blot in their policy which Earl Grey and Lord George Bentinck had detected some years before, viz., that they had made the negro idle and discontented. They, therefore, at all events, some of them, refused to circulate this excellent despatch when invited by the Governor to do so, and then he became engaged in some controversy with them about it, and he cast upon them a kind of reflection that it would be well if they used their influence with the people more for their real good. And in sending home to the Secretary of State his account of the matter, he enclosed extracts from the Life and Letters of Mr. Charles Metcalfe, a former governor, to the effect that the Baptist ministers were a very mischievous body of men.

"I am bound by my duty to inform your lordship that, in my opinion, the worst evil which hangs with a menacing aspect over the destinies of this island, is the influence exercised with baneful effect by the majority of the Baptist ministers. It is the worst because it is the more irremediable. Other evils and difficulties may yield to time, which may also diminish the influence of the Baptist missionaries or produce successors of a more Christian character ; but long after their influence has ceased, its pernicious effects on the disposition of the people will remain. I entirely renounce the opinion which I at one time entertained that they had done more good than harm. The good that they have done would have been done without them. The evil is exclusively their own.

"There is another evil caused by the wickedness of a few men, Baptist missionaries, pretended ministers of religion, but really wolves in sheep's clothing, who foment discontent and disaffection among the negro population. Whatever their motives may be, their conduct is most pernicious.

"This evil also seems to be without remedy." (Extract from a Letter of Sir C. Metcalfe, dated June 10, 1840, quoted at page 328 of vol. ii. of Kaye's "Life of Lord Metcalfe.")

The Governor, moreover, in his despatch wrote :—

"One of the great objects of the agitation kept up by certain of the Baptist ministers or by other Dissenters is the abolition of payments to the State Church : but the parties who stimulate this agitation forget that the ignorant and excitable negroes, when told that they are unjustly or improperly taxed for such a purpose, simply look upon it as a wrong to be revenged, or redressed in their own way. It is easy to influence the evil passions of such a population, but impossible to guide, direct, or control them when once excited."

This controversy has an important bearing upon the condition of the colony, and the causes which led to the rebellion, and deserves a particular attention. It has a close connection on the one hand with the causes tending to rebellion, which has for years been at work in the colony ; and on the other hand with the rebellion which ensued.

The scope of the celebrated letter of Dr. Underhill, a kind of manifesto on the part of the Baptists, was to convey the impression that the black peasantry were ill-treated, and that the disaffection was the result of distress which arose from that cause. And its evident object was to trace it to this cause, rather than to the deterioration of their

character arising from the absence of those measures of restraint and education which our ablest statesmen considered ought to have accompanied emancipation. The letter being sent by the Secretary of State to the Governor for the purpose of an answer; he necessarily sent copies to the magistrates and local authorities in order to *obtain* an answer. And he sent home to the Secretary of State an immense body of evidence refuting its statements, and showing that the peasantry were not ordinarily in a state of distress, but quite the contrary, and that the real source of the evil was their idleness, and indisposition to work, a view quite in accordance with the opinions of all our statesmen. And the Secretary of State sent an able and excellent despatch in answer, taking the same view, and enforcing upon the black people the necessity for energy and industry. This was published by the Governor, and the publication being a public refutation of the misrepresentations which had been circulated amongst the blacks by certain Baptist ministers, extremely annoyed them, and they actually complained of it. The course taken by the Governor, however, was quite approved of by the Secretary of State. The Governor wrote thus to him about it :—

“I have the honour to acknowledge the receipt of your despatch No. 222 of 14th June, conveying the reply of her Majesty to the petition of certain poor people of St. Ann’s.

“This reply has been duly communicated to the petitioners.

“Considering the agitation which has recently been got up in reference to the alleged starving state of the people of this colony, and in view of the very injurious impressions as to the amount of aid and assistance to be offered them from home which have been instilled into their minds by designing persons, I have thought it would be a great public advantage to make generally known the very just sentiments expressed, and the excellent advice given in the reply referred to.

“I have therefore directed the Queen’s reply to be published in the ‘Government Gazette’ and in the local newspapers, and I do not doubt but that it will have a very beneficial effect in allaying the irritation and correcting the misrepresentations which have originated from Dr. Underhill’s letter.”

To whom the Secretary of State replied in August :—

“I have to acknowledge the receipt of your despatch of 6th July, stating that you had published in the ‘Government Gazette’ and in the local newspapers the reply which I was commanded by Her Majesty to make to the petition of certain poor people of St. Ann’s, which was forwarded in your despatch No. 117 of 25th April.

“I approve of the publication of the reply.”

But though the Secretary of State approved of the publication of the reply to the representations of the Baptist party; *they*, of course, did not. Gordon was enraged at it, and it formed the main topic of the well-known inflammatory address which he issued to the blacks urging them to be “*up and doing.*”

The Baptist party in the colony and in this country made strenuous efforts to throw upon the Governor the blame of the discontent which arose from the publication and refutation of *their own manifesto*.

The close connection between this controversy and the rebellion which broke out so soon afterwards, will appear from the statements on both sides. On the 17th August, 1865, the Governor’s Secretary wrote to the Baptist minister in question, who had refused to receive and circulate Secretary Cardwell’s excellent letter :—

“I am commanded by the Governor to acknowledge the receipt of your letter, and to request you will be so good as to hand over to the Custos of St. James, the circulars which you decline to circulate, containing the advice of your Sovereign, and which, though originating in a Memorial from the poor people of St. Ann’s, is equally as applicable and equally as sound advice to the parishioners of St. James, or any other parish in the island.

“I am further to state that *if such advice had been more frequently given before by those who undertake to guide and teach the people, their condition at the present moment would probably have been much better than it is, and the advice be less needed now.*”

Thus, it will be seen in the view of the Governor, these gentlemen were, in some degree, responsible by reason of their neglect to use their influence better—for the state of

things which existed, and which on both sides, it was admitted brought about the rebellion ; for on the same day, Dr. Underhill, the agent in England of the Baptist party, wrote to the Secretary of State :

“ You are doubtless aware that the publication in Jamaica of your despatch to his Excellency the Governor, containing a copy of my letter, has created intense excitement throughout the island. I am given to understand that the facts on which I ventured to address you are unquestioned, although opinions vary as to the causes of the distress under which Jamaica is suffering, or the intensity of their operation. Should her Majesty's Government, under the circumstances, decline to take some decisive action, *great disappointment will result*, and I fear the existing despondency of all classes will be aggravated by the expectations the inquiries of the Governor have awakened.

“ Many additional facts and important documents have been communicated to me, on which I shall venture, when I return to town, to address you. Meanwhile, if it be consistent with the practice of the Colonial Office, I would earnestly request the privilege of your permission to peruse the reply of his Excellency the Governor of Jamaica to the statements of my letter. I should then be able more usefully to lay the whole case before you for your final consideration.”

This letter indirectly reveals the *influence* of this party at the Colonial Office ; the writer requesting and receiving permission to peruse and reply to the despatch of a Colonial Governor to the Secretary of State. The letter and the reply alike disclosed a state of disaffection produced by representations to the peasantry, the reverse of those which had been made in the salutary despatch of the Secretary of State. The reply was dated the end of September, 1865 :—

“ In answer to your letter of the 17th of August, I am directed by Mr. Secretary Cardwell to state that he has no objection to your seeing the despatches which have been received from the Governor of Jamaica on the subject of your letter, but that they cannot be duly appreciated without a careful examination of the *reports and statements collected from the custodes of parishes, magistrates, clergymen of the Church of England and other ministers of the Gospel, judges and others, on which the Governor's views are founded and maintained*. These reports and statements are extremely voluminous, and much time and labour would be required to make copies of them, but they will be open to your perusal at any time at which it may suit your convenience to attend at this Office for the

purpose of reading them. And when you shall have read them, Mr. Cardwell will be glad to learn what specific action of the Government they appear to you to suggest, always bearing in mind that legislative action requires the concurrence and co-operation of the Legislative Council and Assembly of Jamaica.

“With reference to the apprehension you express that the excitement occasioned by the inquiries to which your former letter led, will result in great disappointment if some decisive action be not taken, I am desirous to acquaint you that the Governor has reported, though without attaching much credit to it, *a rumour of riots and insurrection to break out in consequence of delusions created in the minds of the peasantry by designing persons taking advantage of the representations made of the hardships to which they are subjected*! and therefore if you shall have any measures to suggest for the benefit of the peasantry, which it is within the competency of her Majesty’s Government to adopt, it will be desirable that your suggestions should be made with as little delay as possible.” (Parliamentary Papers on Affairs of Jamaica.)

The answer of Dr. Underhill on the part of the Baptists, was a demand for a Commission of Inquiry. This was at the commencement of October, 1865, and in a few days afterwards the insurrection broke out. Of course, after this controversy, both the Baptist ministers referred to, and their friends, would be most anxious to avoid the moral responsibility for the rebellion, and endeavour, either to deny it, or to cast the blame of it on the Governor; while he, on the other hand, pointed to it as a proof of the truthfulness of his predictions, and the mischievous results of their influence.

This became known, and excited great indignation; which was increased when the despatch from Mr. Eyre announcing the outbreak of the rebellion, contained these passages :—

“I cannot myself doubt that it is in a great degree due to Dr. Underhill’s letter and the meetings held in connection with that letter, where the people were told that they were tyrannized over and ill-treated, were over-taxed, were denied political rights, had no just tribunals, were misrepresented to her Majesty’s Government by the authorities and by the planters, and where, in fact, language of the most exciting and seditious kind was constantly used, and the people told plainly to right themselves, to be up and doing, to put their shoulders

to the wheel, to do as the Haytians had done, and other similar advice.

"The parties who have more immediately taken part in these nefarious proceedings are : firstly, G. W. Gordon, a member of Assembly and a Baptist preacher ; secondly, several black persons, chiefly of the Baptist persuasion, connected with him ; thirdly, various political demagogues and agitators who, having no character or property to lose, make a trade of exciting the ignorant people ; fourthly, a few persons of better information and education, who find their interest in acquiring an influence amongst the black people by professing to advise them, whilst in reality they are but exciting and stimulating their evil passions ; fifthly, a few Baptist missionaries, who endorse, at public meetings or otherwise, all the untruthful statements or innuendoes propagated in Dr. Underhill's letter ; and lastly, a section of the press, which like the *Watchman* and the *County Union*, is always disseminating seditious doctrines, and endeavouring to bring into contempt the Representative of the Sovereign and all constituted authority.

"Whilst it is my duty to point out how mischievous has been the influence of a few of the Baptist ministers, and of various members of that persuasion, it is equally my duty, and a pleasure to me, to state that I believe the large majority of the Baptist ministers have been most anxious to support the authorities, to teach their people to be loyal and industrious, and to endorse the advice given to the peasantry by Her Most Gracious Majesty.

"In reporting the occurrences of the outbreak of the rebellion and the steps taken to put it down, it is my duty to state most unequivocally my opinion that Jamaica has been, and to a certain extent still is, in the greatest jeopardy."

These passages, undoubtedly, were understood or misunderstood to impute to some, even amongst the English Baptist missionaries, a large degree of responsibility for the rebellion. And they naturally excited a great amount of indignation among the members of that powerful and respectable religious body ; and more or less among members of the others of the three great "denominations of Dissenters," and that large class, even of members of the Church of England, who have a great degree of religious sympathy with them, and are associated together with their numerous and charitable works, especially in abolitionism. The consequence was that Mr. Eyre had arrayed against him these powerful religious bodies, com-

prising, perhaps, the bulk of the middle classes in this country.*

And these powerful religious bodies were bound together, above all, by the tie of a common feeling on the subject of abolitionism: a subject which had by no means lost its influence by reason of the carrying of emancipation; for, as already shown by quotations from our ablest ministers, the abolitionist party were charged with having in truth ruined the colonies and injured the negroes by the want of wisdom and foresight which had marked that measure, in consequence, it was said, of their ignorant, one-sided, and narrow-minded views, and above all the intensity of the prejudices as regarded the negroes, and their former owners the planters. These excellent people regarded emancipation, so to speak, as on its trial, and when the news arrived of a rebellion commenced by massacre, and said to have been a war of extermination

* In printing the above it is only fair to notice that the Commissioners in their report point out that Gordon and Bogle were members of the body called Native Baptists, the class of whom Mr. J. Gurney, in "Six Months in the West Indies," had spoken so strongly. It was probably of this class Gordon himself spoke when he said, speaking in his place in the House of Assembly on the 28th April, 1863, "I know that the Baptist congregation is the most numerous in the island, and, if you suffer them to come here for aid to repair their chapels, they will come for the means of supporting their ministers, *many of whom are men who pretend, but do not follow, the precepts of Christ—men who have failed to command respect from their riotous conduct.*" Nevertheless, notwithstanding this opinion of them, he afterwards, when he embarked in his fatal career of sedition, joined them; and the Commissioners stated:—"A chapel belonging to him, of small dimensions, stood on his land, and was opened about Christmas, 1864. He was a member of the 'Native Baptists,' a sect so called as being independent of and distinguished from the London Baptist Mission. Mr. Gordon was an intimate friend and correspondent of Bogle. Mr. Gordon had himself become a Baptist, and had a tabernacle of his own on the Parade at Kingston."

As regards the great body of the English Baptist ministers, it is fair to add that Sir H. Barkly spoke highly of them, as did Mr. Eyre in his evidence.

In a despatch of Sir Henry Barkly to the Colonial Office, under date May, 1854, he remarks: "Whatever may have been the case in past times, the advice now given by the Baptist ministers to their flocks is sound enough, and I should be very sorry to see the decline of their influence over them, perceiving as I do that no other would replace it, and that if left to themselves, in remote localities, the people must inevitably retrograde." Mr. Eyre, it will be observed, said very much the same thing as regards the majority, but the despatch was misunderstood, and excited a very strong feeling among the Baptists and their brother Dissenters.

by the negroes against the whites, they felt deeply moved, and impelled by the strongest possible motives and feelings to deny the supposed rebellion, and of course to represent the severities exercised in putting it down as excessive and cruel; as of course they would be, if the danger had not been so great as represented; and on the other hand (as Mr. Buxton himself admitted) they would *not* be if the danger really *had* been so great as represented. These well-meaning but narrow-minded people therefore set about vehemently to deny the reality of the rebellion, and denounce the Governor for cruelty. The two things were correlative; and if the reality of the danger could be denied, then it would follow that there had been cruelty; while, on the other hand, if the impression of cruelty could be produced, it would follow that the reality of the danger would easily be lost sight of. Hence these excellent people, on the one hand, set about circulating the most exaggerated statements of the severities exercised, and on the other hand loudly proclaimed that it was a mere riot after all—that there was a mere casual riot, and that the victims were the aggressors. They had said this *before* the report, and they persisted in saying it still. In truth, it was hardly more obviously false before the inquiry than afterwards. For the very first despatch and its enclosures disclosed that the insurgents *had gone to the meeting armed*, and armed with *firearms*, and that they had even broken into a police-station to *obtain arms*. Those persons, therefore, who had insisted upon this version of the case, and still persisted in it, notwithstanding the report, could hardly have believed it, and surely ought to have known it to be false.

And an interesting question here presents itself, how so many excellent persons should so easily lend themselves to the circulation of self-evident falsehoods or the grossest exaggerations. It might at first sight appear strange, that persons otherwise estimable should allow themselves so to

be worked upon by one-sided views, and the feelings of animosity thus inspired, as to go the most shocking lengths of falsehood and calumny. One of our earlier writers, long ago, lamented this tendency to calumny,* as a marked trait of the worst and vilest natures; and he describes it as a kind of moral murder—a murder of character. A more modern writer—the thoughtful and amiable Addison—points out, however, in more than one paper, that it very often—from causes he analyses with his usual nicety of observation—is found an ingredient in better and worthier characters, and is even a common alloy of such estimable qualities as zeal, or even religion.

“Zeal for a public cause is apt to breed passions in the hearts of virtuous persons to which the regard of their own private interests would never have betrayed them. How many honest minds are filled with uncharitable and barbarous notions out of their zeal for the public good! What cruelties and outrages would they not commit against men of an adverse party, whom they would honour and esteem if, instead of considering them as they are represented, they knew them as they are! Thus are persons of the greatest probity seduced into shameful errors and prejudices, made bad men, even by the noblest principles. A furious party spirit, when it rages in its first violence, exerts itself in civil war and bloodshed; when it is under restraints, it breaks out into falsehood, calumny, and a partial administration of justice. In a word, it fills a nation with spleen and rancour, and extinguishes all the seeds of good nature, compassion, and humanity. Its influence is fatal to men’s morals and understandings. It sinks the virtue of a nation and destroys even common sense.” (Essay on Party Spirit.)

He particularly points out how this rancour commonly arises in a good and even religious cause:—

“Many a good man may have a natural rancour and malice in his heart, which has been in some degree quelled and subdued by religion; but if it finds any pretence of breaking out which does not seem to him inconsistent with the duties of a Christian, it throws off all restraint and rages in its fury. Zeal is, therefore, a great ease to a malicious man, by making him believe he does God service while he is gratifying the bent of.” (Essay on Zeal.)

* Lord Clarendon, who says, “It is a thing very much to be lamented, to see with what greediness and alacrity men run to the defaming of one another, which can

He points out the sophistries by which men persuade themselves to circulate falsehoods for the sake of a good cause, or what they choose to consider so :—

“I have frequently wondered to see men of probity, who would scorn to utter a falsehood for their own particular advantage, give so readily in to a lie when it becomes the voice of their faction, notwithstanding that they are thoroughly sensible of it as such. How is it possible for those who are men of honour in their persons thus to become notorious liars for their party? If we look into the matter we shall find reasons for it. In the first place, men are apt to think the guilt of a lie may be very much diminished by the very multitude of those who partake in it.

In the second place, though multitudes who join in a lie cannot exempt themselves from the guilt, they may from the shame of it. The third and last great motive for men joining in a popular falsehood, is the doing good to a cause which every party may be supposed to look upon as the most meritorious. If a man might promote the supposed good of his country by the blackest calumnies and falsehoods, our nation abounds more in patriots than any other of the Christian world.” (Essay on Party Lies.)

“Every one who has in him the sentiments either of a Christian or a gentleman, cannot but be highly offended at this wicked and ungenerous practice, which is so much in use among us that it has become a kind of national crime. By these means the highest posts are rendered cheap in the sight of the people, and the noblest virtues and most exalted abilities are exposed to the contempt of the vicious and the ignorant. If this cruel practice tends to the utter subversion of all truth and humanity among us, it deserves the utmost detestation and discouragement of all who have either the love of their country or the honour of their religion at heart. *Infamy, like every other punishment, is under the direction and distribution of the magistrate, and not of any private person.*” (Essay on Libel.)

Noble and admirable sentiments; alas! but little regarded by those men who went about reviling Mr. Eyre as “murderer” and “monster,” holding him up to obloquy in public speech and writing, and declaring loudly that his conduct had “covered him with infamy.” Still

proceed from nothing but want of humanity, as well as defect of justice; and if it were not for the danger of the law, they who thus conspire the murdering of men's honour and fame, would as pleasantly concur in the murder of their persons. This spirit of calumny never proceeds from a sudden heat and passion, as inconsiderate expressions may, but from a formed impotent rancour in our nature, and is so far from doing what it does not intend to do that it seldom does half the mischief it proposes and desires to do. It is fraught with an unnatural and ungenerous spite.”

less were these sentiments regarded by those more dangerous assailants who sought to make it *appear* so by means of ingenious arts of perversion or suppression, stating one-half of a fact without the other, or stating one fact without another which took away from it all its ill effect, and resorting to all the wretched artifices by which clever slanderers ruin reputations.

But the truth is, it would be an injustice to these good people to impute to them any deliberate intention of doing injustice, or circulating untruths. They did but illustrate the natural—nay, inevitable—consequence of that *one-sidedness* of mind which is the result of the strong partisan feeling arising from the constant pursuit of one object and one idea. They were excellent people; they had but one fault: they had but one idea. They had followed it so long that it pervaded their whole mind. They could see but one side of the subject. The fundamental maxims of their morality were that the negroes could do no wrong, and that no wrong could be done in defence of the negro. All their literature will be found pervaded by these notions. You may look through the whole of it without having any idea that the negroes had ever done wrong. Thus, for instance, when Mr. Montgomery Martin alludes to the massacres in St. Domingo, he alludes to them in vague terms—"There were massacres"—without saying by whom; or, when compelled to disclose that there were any by negroes, he boldly excuses and palliates them, and says that "the very worst atrocities they perpetrated were as nothing to the crime of slave dealing!" Those atrocities being such as make the blood chill to read of, so that those perpetrated at Morant Bay, however bad, were only the beginning of horrors. Now, it may be imagined that men who palliated the unutterable atrocities of the negroes in St. Domingo would not be much appalled by the milder horrors of a mere massacre; and accordingly, from first to last, the sympathies of these people were reserved

for the assassins and their associates : as to their victims or their relatives—as to the natural feelings of relations or friends and acquaintances—nothing was heard or cared about.

The whole outcry was as to the *numbers executed*, nothing being said as to the numbers *implicated*. They pursued their traditionary course of looking only at *one side* of the case—the severities inflicted upon the negroes : they took no note of the atrocities committed by the negroes, and the numbers implicated in those atrocities. Yet, upon this point, the Commissioners were full and explicit.

They stated distinctly that *thousands* were implicated in the various murderous outrages committed ; and the case, as stated by them, came to this—that thousands having been implicated, hundreds were executed—that is to say, that between four and five thousand were implicated, and less than four hundred and forty executed—that is, less than one-tenth of those implicated. And further, the only excesses they stated were in the first few days, during the first hot rage of pursuit. The subsequent executions they stated were by sentence of court-martial ; and, as a rule, and with scarcely any exceptions, the trials were fair, and the sentences just. Such, it will be seen, was the effect of the Report. This by no means satisfied the partisans of the negro. It involved, of course, that some thousands of the negroes were actually implicated in a bloody rebellion, and the great bulk of the rest *ready* for it. This it would never do to admit. What would become of the policy of emancipation, and the reputation of those who caused it ? And what would become of the character of those who for years had been circulating mischievous and mistaken notions among the negroes as to land and rent ? The Commissioners distinctly reported that these notions among the blacks were at the bottom of it all. How was all this to be obscured

or got out of sight ? It would not do now altogether to deny the rebellion ; the better sort could not bring themselves to that. Besides, it was too flagrant to be longer denied. What remained, then ? The ready resource of partisans. The traditionary policy of the party. The statement of *one-half* of the case, and the suppression of the rest. The recital of the severities inflicted, and the concealment of the atrocities committed. The recital of the numbers executed, and the concealment of the numbers implicated. The recital of the capital sentences, and the concealment of the fact that they were, with few exceptions, fair and just. And, lastly, the recital of these *exceptions*, as if they were specimens and illustrations of the *whole*. The result, of course, would be an immense impression of severity, which would look like cruelty ; and under cover of this impression the abolitionists, the agitators, and the negroes, would escape. And this was the course pursued, too successfully.

Nor was this all. The abolitionists and the religious bodies secured powerful allies in the political and philosophical Liberal. This alliance they gained by representing that, as the negroes were free British subjects, and the common law prevailed in Jamaica, the question really concerned the people of this country as well as the inhabitants of the colonies ; a monstrous fallacy, resting, as all fallacies do, on half a truth ; for, although it is true that the common law is more or less applied in settled colonies, it is the common law of English or British *born* subjects and their descendants, and for their protection, and not, (save so far as actually used or adopted) for the protection of alien or native inhabitants, as against *them*. And there was a moral fallacy greater than the legal, for it was pedantry to talk of any rebellion in this country, or even in Ireland, at all comparable to the danger of a *negro* insurrection, especially in a colony so exceptionally situated as Jamaica, with such an *enormous* preponderance of negroes ; *that* is a position

without any parallel on the face of the earth, and one therefore for which *exceptional* provision had been made by local statutes, *based* upon this peculiar and exceptional peril, and having not the most remote resemblance to the condition of these countries, or to any rebellion of British born subjects. What class of British *born* subjects are likely to commit cruel massacres upon their countrymen, reserving their countrywomen for a viler fate? What portion of the British dominions can present any parallel to the peril of a negro insurrection in Jamaica, where they are half a million, and the whites a mere handful? These differences, however, were overlooked, the most monstrous misrepresentations were circulated* as to the bearing of the legality of martial law in Jamaica upon its legality here; as if, whatever its bare legality, it could ever be dreamt of here! The consequence was that the abolitionists obtained the alliance of the political and philosophical Liberals; and the result of that was a combination of forces almost irresistible against the unfortunate Governor, aided and advocated by almost the whole power of the press. The consequence was, that a body of gentlemen formed for the express purpose of promoting criminal prosecutions, and comprising gentlemen of the highest position and the greatest influence—many of them members of Parliament—issued from time to time the most inflammatory statements to the public respecting the alleged excesses. These statements were all studiously one-sided; so that, if not absolutely untrue, they conveyed impressions precisely the opposite of the real facts. They paraded the numbers executed, for instance, without stating the numbers implicated; stated the trials and sentences without stating that they were, as a rule, fair and just; and stated the *exceptional instances* as if they were *illustrations*. Speeches were made in Parliament founded upon these one-sided statements,

* The more plausibly, because it was necessary, the Colonial statutes being general, to discuss the common law on the subject.

and powerful articles in leading papers written thereon, while men of influence wrote letters to the editors to enforce the same views.* The result was, of course, an immense impression upon public opinion; the more so since, as the other side was extremely unpopular, few cared to encounter the obloquy of appearing to defend severities which, at first sight, appeared excessive, and a just estimate of which could only be formed by a large and comprehensive view of the general condition of the colony and the nature and degree of the danger supposed to be impending, and the numbers of those implicated, and so forth, all matters which it required a great deal of trouble to explain and make intelligible, and which, after all, would not produce so powerful an impression upon the mind as a few sensational statements as to the numbers hanged or shot in the course of the suppression. The consequence was that, with few exceptions, the whole force of public opinion was directed against the Governor; and under these unfavourable auspices, debates in Parliament, and proceedings in the courts ensued.

Soon after the publication of the report, Mr. Buxton, who, as the leader of the abolitionist party, had hitherto acted as chairman of the Jamaica Committee—a body formed of most influential and highly estimable gentlemen for the express purpose of promoting criminal prosecutions, of those who had been engaged in the execution of *martial law*—addressed the following to a member of the Jamaica Committee, dated June 26, 1866:—

“Dear Sir,—I find that I shall probably be prevented from attending the meeting of the committee to-day. I wish, therefore, to write to you the views I entertain with regard to the prosecution of Mr. Eyre by our com-

* It is hardly necessary to say that all this was illegal, as criminal prosecutions were intended, for it obviously tended to prevent a fair trial. This was laid down by the Court of King's Bench in Sir F. Burdett's case, which will be found fully cited in the author's "Review of the Authorities." Sir F. Burdett was fined and imprisoned for writing a letter about the Manchester massacre.

mittee. I have deliberated most anxiously on the subject since we last met, and am fully decided not to support that proposal.

“No one, indeed, can have felt deeper indignation than myself at the shameful misconduct of Governor Eyre towards the people intrusted to his care. The report of the Commission, feeble and timid as it is, and written though it be with a manifest anxiety to exculpate the authorities, yet but too amply proves the atrocious cruelties of which they were guilty. It proves, too, that these cruelties were not committed (as some have tried to make out) in order, by striking terror into the negroes, to prevent the further spread of the riot or insurrection; but that they took place after every shadow of resistance had vanished, and were simply acts of vengeance inflicted almost indiscriminately on the negro population, with scarcely a pretence of distinguishing the innocent from the guilty. It proves that for more than a month the civil, naval, and military authorities went on wreaking this vengeance at their own caprice; that a couple of young lieutenants and an ensign went on hanging any one they pleased, till nearly 200 persons had perished on the scaffold by their orders alone, besides nearly 300 who were put to death by others; it proves that, besides all this hanging and shooting, horrible tortures were inflicted on more than 600 persons, women as well as men, and in many cases, in addition to the punishment of death; and that Mr. Eyre never moved a finger to prevent or to punish these atrocities.

“These facts, which at first seemed incredible to the British public, have been proved by the report of the Commissioners, and must cover the name of Mr. Eyre with infamy. Even those who have most eagerly advocated his cause, must allow that the Governor of a colony who thus gave the rein to every one, without exception, who chose to vent his rage upon the people, without the smallest attempt to moderate their passions or restrain their cruelties, showed himself utterly unfit for the responsibilities that had unhappily devolved upon him. And with regard to Mr. Gordon, no one can dispute the conclusion of the Commissioners, that Mr. Eyre shared in the awful guilt of consigning an innocent man to the gallows.

“I cannot, however, shut my eyes to this fact, that in arresting Mr. Gordon, and sending him to be tried by court-martial, Governor Eyre was under the belief that a wide-spread conspiracy had broken out in the island with a view to a general massacre of the white population, and that Mr. Gordon was the prime mover of this design. The report of the Commissioners has completely dispelled this belief. They say themselves that the conclusion at which they have arrived ‘is decisive as to the non-existence of such a conspiracy;’ and they admit (though evidently with reluctance) ‘that the evidence against Mr. Gordon was wholly insufficient to establish the charge upon which he took his trial.’

“But while we feel all the horror which must be inspired by the reflection that not only one innocent man, but hundreds of innocent men, were put to death in cold blood, owing to this shameful misapprehension by the Governor of the island, still I do not think that any one, who has due

regard to truth, can deny that Mr. Eyre really shared in the belief, universal at the moment among all the white and coloured men of the island, that such a conspiracy had existed, and that Mr. Gordon was, to a great extent, guilty of promoting it.

"It seems to me impossible to regard the course taken by Mr. Eyre under these circumstances—shameful and criminal as it was—yet as involving him in the guilt of wilful murder."

It will be seen how utterly at variance the statements in the above letter were with the statements in the Report, and how little effect the calm, careful, and judicial statements of the Commissioners had in moderating the violence of partisan attacks. It is not too much to say that *every single statement* of matter of fact in the above is distinctly at variance with the authoritative statements of the Royal Commissioners. The report did *not* "prove that for more than a month the civil, naval, and military authorities went on wreaking their vengeance at their own caprice;" but on the contrary, that this language, if fairly applicable at all, could not be so as to more than a few days, or at the utmost a week, in the first hot rage of pursuit; for that, *after that no executions took place except by sentence of court-martial, and the Commissioners expressly reported that the trials, with only a very few exceptions, were satisfactory and proper.* The Report did *not* "prove that *hundreds of innocent men were put to death*, owing to the fault of the Governor," but, on the contrary, proved that, with very few exceptions, *no innocent persons were executed*; that the instances of it were undoubtedly exceptions, and occurred not only in the first rage of pursuit, but also the most part not only without orders, but in the absence of the officers, and in every case without the knowledge of the Governor, and without any sanction, direction, or authority from him. And as to the great bulk of those put to death—350 out of 439—the Commissioners expressly reported, *not that they were innocent, but that they were guilty.* For they reported:—

"In the great majority of cases the evidence seems to have been unobjec-

tionable in character, and quite sufficient to justify the findings of the court."

And they only specified *three* instances in which they deemed the evidence insufficient in amount, and some half-dozen in which it was unsatisfactory in character; and they had the candour to add, that it must not be supposed that even in these cases it by any means necessarily followed that the men were innocent, for that in some cases there was *other* evidence at the time than what appeared in the proceedings, and in some the guilt of the parties was actually proved before the Commissioners. So that the fair effect of their Report was that, as to the great bulk of the cases, the persons put to death were *guilty*. And they *do not specify a solitary case of a party proved to have been innocent*. In the face of this report Mr. Buxton put forth the above letter, in which he stated that "*hundreds of innocent men* had been put to death through shameful misapprehension upon the part of the Governor."

Equally unfounded were the statements as to the case of Gordon. There was no pretence for saying that the conclusion of the Commissioners was that he was innocent, or that Mr. Eyre had incurred the awful guilt of consigning an innocent man to the gallows. On the contrary, the necessary conclusion from their report was, that he was *guilty*. That is, guilty in *substance*. For they expressly stated that the *substance* of the charge was, that he had incited the insurgents to insurrection, and they found in effect that he *had* so incited them. They stated—

"The charges were for *furthering* the massacre, and at divers periods previously *inciting* the insurgents, and thereby by his influence *tending to cause a riot*."

And they also stated that—

"Two heads of offence were drawn up, one for *high treason*, the other for *complicity* with the parties engaged in the rebellion, riot, and insurrection at Morant Bay."

And stated with great care and exactness that—

“The evidence was insufficient to establish *the charge* upon which he was tried.”

That is, the charge formally drawn up, of *actual* complicity in this *particular* outbreak. They did not say that he was not guilty of what they themselves had stated to be the substance, viz., inciting the insurgents to a riot; but, on the contrary, their particular finding showed that he was guilty of it, for they showed that he had used language calculated to incite them to insurrection, and that he had been so understood by the insurgents. Therefore, in substance they found that Gordon was *guilty*, and at all events were very far indeed from finding that he was an innocent man. Although they did their best for him, they showed very clearly their own impression to be that he was in reality *morally guilty of the massacre*, and *really* guilty of inciting to insurrection. It was far from being true that the report of the Commissioners had dispelled the belief that a widespread conspiracy had broken out, with a view to a general massacre of the white population, and that Mr. Gordon was the prime mover of the design. On the contrary, the statements of their Report stated clearly that there *was* such a conspiracy, and that though local in its origin, it was one in its nature calculated to, and did, in fact, spread with singular rapidity over a large tract of country, and was rapidly overrunning the island. And their statements *showed* clearly (though they shrank from *stating* it distinctly) that to *this* conspiracy Gordon was virtually a party; that is to say, that he was urging and inciting the active movers in it, and using language calculated to incite them to it, and which they understood to mean it, and which he *must have known they would so understand*, and therefore must have *intended* them so to understand. And though they negatived the existence of a *general* conspiracy, or his actual complicity

in the *particular* outbreak, they stated a *local* conspiracy, certain to become universal if successful, and stated, or showed, his actual complicity in *that*, and his use of language calculated to incite to insurrection.

It would be impossible, therefore, to imagine anything more entirely opposed to the actual facts, as reported by the Commissioners, than these inflammatory representations, put forth upon the high authority of Mr. Buxton and others, both in and out of Parliament. And it is impossible to imagine anything more calculated to injure and prejudice him in the eyes of the public than the circulation of such statements by a person in such a position.

It is necessary here to explain the causes of the agitation and combination against the Governor. It was indeed by *means* of the circulation of such statements that his condemnation was obtained. That is to say, his *condemnation was rested upon a representation of the case entirely unlike the real truth of it as reported by the Royal Commissioners*. This must be manifest from a perusal of Mr. Buxton's letter, which was the manifesto of his assailants. It is simply *a series* of enormous misstatements. Not only is it not *like* the actual truth ; it is utterly the *opposite* of it in every respect. And *this* was the view upon which the Governor was condemned. It will be seen that in the ensuing debate in the House of Commons Mr. Buxton distinctly represented the case thus, and admitted, moreover, that if the danger had been so great as had been represented, then he should not say that there had been any serious excesses. So that the Governor was condemned upon the footing of a state of facts utterly opposite to the truth in both respects, whether as regarded the degree of danger or the nature of the measures taken. It was presumed that Mr. Eyre was to be deemed a ruined man. Mr. Buxton in his letter only discountenanced the idea of a prosecution for murder because it was not likely to succeed, and because he assumed that Mr. Eyre was for

ever removed from the service of the Crown. Moreover he desired other prosecutions.

“Furthermore, in thus confining our action to the case of Mr. Gordon, we should virtually condone all those other atrocities committed by the naval, military, and civil authorities in Jamaica, which, in my opinion, deserve punishment not less severe. I think we ought to be satisfied so far as Mr. Eyre is concerned, with his dismissal and disgrace; but we ought to insist on the same penalties being inflicted on the more immediate actors in these horrible scenes. My view, therefore, would be that we should ascertain what are the intentions of the authorities at home with regard to these other offenders, and if we find that no action with regard to them is about to be taken, we should bring the subject before Parliament, with the view of compelling them to do justice. Moreover, we ought at once to demand compensation for the innocent sufferers by these outrages.”

The other members of the Jamaica Committee, however, resolved *not* to rest here, even as against Mr. Eyre, but to press prosecutions both against him and the military commanders, and all the officers engaged in the exercise of martial law, especially those concerned in the case of Gordon. The main efforts, however, of hostility were directed against Mr. Eyre; and in the meantime, in order to excite and inflame public feeling as much as possible against him pending the intended prosecution, it was resolved to get up a debate on the subject.

In the first instance, it was attempted to induce the Government to institute criminal prosecutions. Immediately after the publication of the despatch, on the 8th June, 1866, a change of Government took place, and Lord Derby succeeded Lord Russell at the head of the Administration. In the course of a short time, on the 17th July, so soon as the Government were settled, Sir Hugh Cairns being Attorney-General, and Sir William Bovill Solicitor-General, Mr. Mill, the chairman of a body of gentlemen formed for the purpose of promoting the prosecution of the Governor and military commanders for the exercise of martial law, gave notice of a question to the Government

as to whether they intended to prosecute any of the officers, the military commander, or the Governor. The terms of the questions appeared to imply, as to the latter, that he was responsible for everything that had been done by any one during the whole period of martial law. The notice of question, evidently framed with great care, was in these terms :—

“ Whether any steps have been or will be taken to bring to trial Lieutenant Adcock for unlawfully putting to death two men, named Mitchell and Hill, without trial, and six persons after alleged trial by court-martial on charges not cognisable by a military court ; for flogging without trial Mr. John Anderson and others, and authorising one Henry Ford to flog many men and women without trial, one of whom, named John Mullens, died in consequence. Whether any steps have been or will be taken to bring to trial Captain Hole for hanging one Donaldson without trial ; for shooting and permitting to be shot various persons without trial ; for putting to death by hanging and shooting thirty-three persons after trial by a so-called military court for acts not cognisable by a military court, and without observance of the rules prescribed by the Articles of War ; for flogging various men and women without trial ; and for being accessory after the fact to the unlawful putting to death of numerous persons by soldiers under his command. Whether any steps have been or will be taken to bring to trial Lieutenant Oxley for putting John Burdy to death after a similar unlawful trial, and for permitting the men under his command to fire at unarmed peasants, and cause the death of several persons. Whether any steps have been or will be taken to bring to trial Ensign Cullen and Dr. Morris for putting three men to death without trial, and Dr. Morris for shooting one William Gray. Whether any steps have been or will be taken to bring to trial stipendiary magistrate Fyfe for burning houses of peasants, putting to death one person without trial, for being accessory to the unlawful putting to death of various others. Whether any steps have been or will be taken to bring to trial Attorney-General Bishop, Lieutenant Brand, Captain Lake, and Captain Field, for sitting as presidents or members of alleged courts-martial, by whom numerous persons were unlawfully put to death. Whether any steps have been or will be taken to bring to trial General O'Connor, for having been accessory before and after the fact to numerous unlawful executions, some of them without trial, and others after the illegal trials already specified. Whether any steps have been or will be taken to bring to trial Colonel Nelson, Brigadier-General in Jamaica, for unlawfully causing to be tried in time of peace, by military courts irregularly composed, for acts alleged to have been done before the proclamation or beyond the juris-

diction of martial law, and after such trial to be unlawfully put to death the following persons—George William Gordon, Edward Fleming, Samuel Clarke, William Grant, George Macintosh, Henry Laurence, Letitia Geoghan, and six other women, one of them in a state of pregnancy ; Scipio Cawell, Alexander Taylor, Toby Butler, Jaspar Hall Livingstone, and various other persons who had been previously flogged ; and about 180 other alleged rebels ; and for authorising the flogging without trial of Alexander Phillips, Richard Clark, and numerous others. Whether any legal proceedings have been or will be ordered to be taken against Mr. Edward John Eyre, lately Governor of Jamaica, for complicity in all or any of the above acts, and particularly for the illegal trial and execution of Mr. George William Gordon. If not, whether her Majesty's Government are advised that these acts are not offences under the criminal law."

Mr. Disraeli, then Chancellor of the Exchequer, replied as follows, on the 19th July, 1866 :—

"The House has heard the ten questions which the hon. member has thought fit to address to the House in a form which I think somewhat beyond the boundaries of Parliamentary precedent, because in putting questions in which opinions also are expressed, we are trespassing in some degree upon the freedom of discussion. It is impossible, under such circumstances, to discuss a subject, and at the same time we may obtain an answer from the Government which may lead the public mind to the presumption that those who reply to them agree in the assumed state of facts on which the questions are founded. Now, nine of those questions, which are ten in number, inquire of the Government whether any steps have been or will be taken with respect to those lamentable proceedings in Jamaica which the hon. member treats throughout as unlawful. But after these nine inquiries, throughout which the conduct of certain individuals is assumed to be illegal, there is a tenth inquiry, which comes to this, whether her Majesty's Government, after inquiry, are of opinion that such conduct and proceedings were illegal. Now, we are all agreed that the law advisers of the Crown, from whatever party the Government of this country may be formed, are, generally speaking, the men most eminent in their profession; and if the hon. member is of opinion that it is possible that the law advisers of the Crown may be of opinion that these acts are not illegal, I think the hon. member is hardly justified in assuming throughout his questions that they *are* illegal, and he might have made these inquiries without proceeding on that assumption. But it is not merely that the questions are put in a form which, if unnoticed, might, perhaps, lead to great inconveniences, that I think the course pursued by the hon. member is objectionable ; but, so far as I can judge, though brought forward with great apparent precision, they do not appear in these allegations to be so accurate as could be desired. In the first

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place, throughout these questions, the hon. gentleman seems entirely oblivious of the fact that *the proceedings complained of took place during the existence of martial law*. That is the first feature which strikes one amidst these numerous interrogatories, and there seems throughout a very great confusion in the mind of the hon. member on the nature of martial law, because we have this remarkable expression, certain persons being spoken of as if their cases were decided without trial or 'alleged trial' by court-martial.

"Further, I think the hon. member ought to have taken care in putting these questions, that they should be simply and severely *accurate* in their allegations. Having made these observations, I will now tell the House what really has been done in these affairs. The late Government thought it their duty to advise her Majesty to appoint a commission to proceed to the island, and there, with all the advantage of local inquiry and observation, to investigate what had occurred. I think the late Government took a prudent and proper course. The commission was formed of eminent men, who possessed the public confidence; and whatever controversy there may be on other parts of the question, it will be generally admitted that by their acuteness and assiduity, these eminent persons have quite justified the confidence placed in them by the Sovereign and the late Government. The late Government, acting upon the report of their own Commission, considered the case of the Governor, and dismissed him from their post. That appears to me to be conclusive as regards the case of Governor Eyre. He was dismissed. Those who ask that further steps should be taken, seem to me to confound errors of conduct and errors of judgment with *malice prepense*; but I wholly mistake the House of Commons if they would ever sanction such an opinion. Now with regard to the subordinate officers—either naval or military—the late Government, after deliberating upon the report of their own Commissioners, gave instructions to the Admiralty and Horse-Guards to investigate and report upon the conduct of the officers connected with those departments. The Admiralty, after investigating the subject, decided that no fresh inquiry was requisite, and they approved the conduct of the Admiral on the station. The Horse-Guards, as I am informed, have not made up their minds upon the instructions with which they were furnished, and no one grudges them sufficient time to arrive at a decision of so momentous a character.* Under these circumstances I am at a loss to understand why the hon. member is thus pressing us for information, and why he is so impatient as to ask us what steps are or have been taken. If, upon consideration, her Majesty's Government should feel it their duty to address fresh instructions to the Horse-Guards or the Admiralty we shall do our duty. But all fresh instructions would be, of course, founded upon fresh information, and we

*No further steps were taken. At all events, no officer was censured or dismissed, but excellent instructions were issued for the future.

should only act after having taken the opinion of the law officers of the Crown.* The present state of affairs is, that the late Government considered the conduct of Governor Eyre, and dismissed him. They referred it to the Admiralty and the Horse-Guards, under the instructions of the Government, to consider the conduct of the officers employed. The Admiralty did not disapprove the conduct of the Admiral, and the Horse-Guards have not yet come to any decision. This being the state of the case, I am not prepared to offer any further information to the hon. member." (Hansard's Debates, vol. 148, p. 1068, 1866, July 19.)

This, it will be seen, was a distinct refusal on the part of the Government to institute any criminal prosecutions, either against the Governor or against the military commander, or any of the officers, leaving the latter to the proper tribunal, court-martial. And this view was evidently, from the way in which the answer of the Government was received, acquiesced in by the House of Commons, and received distinct and express adhesion from the most able and independent members, in the course of a discussion which ensued upon the subject. The chairman of the committee of prosecution, Mr. Buxton, who had just withdrawn, upon the ground that he could not concur in a prosecution of the Governor for murder; so that he was aware of the intention to institute such a prosecution, and had, nevertheless, published a letter against the Governor, declaring that his conduct had "covered him with infamy," now made a most inflammatory speech against him in the House of Commons on the subject. His speech was in the spirit of his letter. That is to say, it was entirely one-sided, and so utterly unfair and unjust, it was marked by the most unaccountable disregard of the real facts. "He rose," he said:—

"To call attention to the concluding paragraph of the Report of the Royal Jamaica Commission, viz. :—'That the punishments inflicted were excessive. 1st. That the punishment of death was unnecessarily frequent.

* Sir H. Cairns, Sir J. Rolt, and Sir W. Bovill were law officers under Lord Derby's Government.

2nd. That the floggings were reckless, and at Bath positively barbarous. 3rd. That the burning of 1,000 houses was wanton and cruel.' And to the further statement of the Commission that, 'among the sufferers there were many who were neither directly nor indirectly parties to the disturbances.' And to move the following resolutions:—1st. That this House deplores the excessive punishments which followed the suppression of the disturbances of October last in the parish of St. Thomas, Jamaica, and especially the unnecessary frequency with which the punishment of death was inflicted. 2nd. That this House, while approving the course taken by her Majesty's Government in dismissing Mr. Eyre from the governorship of the island, at the same time concurs in the views expressed by the late Secretary of the Colonies, that, 'while any very minute endeavour to punish acts which may now be the subject of regret,' would not be expedient, still 'that great offences ought to be punished,' and that great excesses of severity on the part of any civil, military, or naval officers ought not to be passed over with impunity. 3rd. That in the opinion of this House, it is the duty of her Majesty's Government to award compensation to those whose property was wantonly and cruelly destroyed, and to the families of those who were put to death illegally. 4th. That since considerably more than a thousand persons are proved to have been executed or severely flogged on the charge of participating in these disturbances, all further punishment on account of them ought to be remitted."

The statements of the Report, put at the head of the resolutions, were, it will be observed, quite *general*; and it has already been shown that the particular statements of the Report showed that the excesses, as far as regarded inflictions of *death*, were in the *earlier* portion of the period of the duration of martial law, in the first rage of pursuit, and, for the most part, were without orders, or against orders, or in the absence of officers. *No allusion, however, was made to this* by the hon. member, who all along implied that the excesses continued throughout the *whole* period of martial law. Thus at the outset the incurable one-sidedness and unfairness of his view was made manifest. And this ineradicable taint pervaded all the hon. member's observations from first to last. The very recital of the Report was incorrect. The Commissioners made no statement that among the sufferers were many who had not participated in the rebellion; and though they threw it out that this may have been so, it was,

except as regarded the earlier part of the period already alluded to, entirely in opposition to the statement in the Report, that "in the great majority of cases the evidence justified the finding." The hon. member began by saying:—

"He said, no one need fear that in supporting these resolutions he would run any risk of hampering or increasing the responsibility of any governor or other official who might have to deal with any emergency on future occasions. He did not ask the House to express any opinion whatever on anything that was done during the suppression of the disturbances. On the other hand, he wished it to be clearly understood that these resolutions meant nothing else than a decisive and emphatic condemnation of the excessive severity with which the disturbances had been punished after they had been suppressed and authority had been completely restored; while *per contra* those who might vote against these resolutions would, in the first place, be incidentally censuring the course taken by the late Government; but much more than that, they would, so far as in them lay, be expressing a deliberate approval on behalf of the British people of the excessive severity with which the disturbances had been punished."

But here it will be obvious that the whole question was tacitly assumed, as, indeed, it had been assumed, by the late Government, that the exercise of martial law was justifiable only during *actual* insurrection or *open* rebellion, whereas it has been seen, the only object of the Colonial Act was to provide for the exercise of martial law *after* actual insurrection or open rebellion had ceased, and it expressly allowed it as long as *danger* continued. It will be apparent, from the observations of the hon. gentleman, that the recall and condemnation of the Governor had been in accordance with *his* views, though it will be seen the Minister who thus yielded to his views had taken an entirely different view of the *facts*. The incurable one-sidedness of the hon. member was so amusingly manifested, when he went on dilating upon the *punishments* inflicted upon the rebels without taking any notice of the crimes which they had committed, that an hon. member (Colonel North) could not help interrupting, and asked—

"Cannot the hon. member give the House some account of the *crimes* for which these men were sentenced?"

The hon. member, however, declined to accede to this request, and went on to dilate upon the *punishments* inflicted. He went on, indeed, to notice some of the grounds on which they had been justified, but entirely misrepresented them. He said:—

"The main plea that had been put forward was that the outbreak at Morant Bay had its origin in a deep, dark, widespread conspiracy to massacre the whole white population of Jamaica, to overthrow the authority of the Queen, and establish a republic after the model of that of Hayti. Perhaps it might suffice, if he quoted the deliberate statement of the Royal Commission, 'that the conclusion at which they had arrived was decisive as to the non-existence of any such widespread conspiracy.'"

But the real danger arose from a *local* conspiracy with a *general* object, certain to spread, and, in fact, *spreading*, as the Commissioners stated, with *singular rapidity*. And the Commissioners not only did not negative but distinctly found the existence of *such* a conspiracy, and the fact that it "spread with singular rapidity." What must have been the one-sidedness of a man's view who could, with that finding before him, speak as the hon. member spoke!

In the same spirit the hon. member went on to state, that the severities inflicted were justified on the ground of *retaliation*, a notion which no one but himself, at least no one in authority, had ever dreamed of, and which arose out of his own imagination:—

"The next plea by which the excessive punishments were justified was, that the negroes had been guilty of such horrible cruelty to some of their victims, as to demand the meting out to them of almost any amount of vengeance. On that point he did not think it possible for the warmest advocate of Governor Eyre to justify his conduct."

Mr. Eyre never having suggested any such justification. The hon. member in the same spirit went on to palliate

the atrocities of the negroes. A single specimen will suffice :—

“The Baron's fingers, though *chopped with the cutlass*, were still hanging to his hand.”

It may safely be said that such special pleading for assassins was never heard in the British Parliament before, and never has been heard anywhere save in the mouths of the abolitionist advocates of the negroes, whose most horrible atrocities, it has been shown in a previous portion of this work, have been always palliated by their partizans. Thus the hon. member went on to disparage the danger, and depreciate the exigency of the emergency. This, it is obvious, was the real point of the case; and it is most important to observe that the hon. member, as the leader of his party, met it by *denying the danger*. And this without any allusion to the real facts of the case, without so much as mentioning the great leading facts on which it must turn, the facts stated by the Commissioners and the Secretary of State—the fearful disparity of the white and black population, 13,000 amid 450,000; the nature of the rebellion, as a war of races, and a war of extermination; and the terrible rapidity with which the conspiracy spread. He said :—

“A third plea had been put forward by some of the more foolish advocates of the authorities—viz., that the hanging, shooting, and flogging of these 1,000 people were necessary, because, forsooth, the force at the disposal of the Governor was so small that had he not taken steps to strike terror into the disaffected population the authority of the Queen—nay, the very existence of the European population—would have been exposed to extreme danger.”

Now he admitted that—

“If indeed the force at the disposal of the Governor was so small, that had it not been, as it were, supplemented by measures calculated to strike terror into the disaffected population, the existence of the European population would have been exposed to great danger; and that but for these severities, not a white person would have been left alive on the island,

i.e., had the Governor's force really been so slender, and the enemy so powerful, that it was the turn of a hair whether the European population was to be massacred, and the colony lost or not—*then he could not find fault with almost anything that might be done in such an emergency.*" (Hansard's Debates, 1866.)

And then the hon. member entered into statements, which turned out to be entirely erroneous, and which were in direct opposition not only to the sworn evidence of the Governor and military commander, but to the official returns, and the report of the Commissioners, that this was *not* so, and that the naval and military force were ample. There was an implied, or, indeed, an express admission, that if the facts should be as were represented by the Governor, then the Governor's justification was made out. Now it is beyond a doubt that the facts in this respect *were* as he represented, for so the Commissioners reported, and therefore it may now be taken, on the authority of the most prominent of his assailants, that the measures he authorised were justified. The sworn evidence, and the official returns, proved that there were hardly 1000 troops in the colony, all told, of whom not above 500 were effective and available for the military operations in the vast district over which the rebellion was spreading with lightning-like rapidity—a district containing 600 square miles and 40,000 negro inhabitants, of whom thousands were already in active rebellion, and the rest cordially sympathising and rapidly rising! Five hundred men among forty thousand disaffected men of a hostile race, with 400,000 more to back them, and the rebellion, a *war of race*, and a war of extermination! Such was the danger the hon. member denied! It is most instructive to observe how the hon. member dealt with this, which was the great point in the case. He stated that men were available at short notice from the neighbouring islands, but omitted to state that they only arrived at the end of the month, and were not distributed until the termination of martial law. Then,

as to the rebels, his account was equally defective in candour :—

“What was the force at the disposal of the enemy? Why, by the Governor's own account, they had no organisation; they had no arms but their knives, and some very few guns, which they did not venture to fire. Not only did they make no resistance, but at the mere rumour that the troops were approaching, when they were twelve miles away, they fled like terrified sheep.”

The hon. member forgot to state that they had *numbers*, and that the sympathy of *race* gave them an infinitely greater power than any mere organisation; that the weapons with which they were all armed were, as described by sworn witnesses, *three feet long, like cutlasses*; that myriads thus armed could easily *obtain* firearms, as they did before the massacre, by surprising and overpowering scattered detachments; and that they would, of course, avoid meeting bodies of troops in the field *without* firearms, their traditionary policy being, as Gordon had said they did in Hayti, to wait till the troops were worn out. And that they did in fact, on the tenth day of the rebellion, when they hoped the troops were becoming worn out, meet them in the field, or rather in the bush. Thus to urge the absence of resistance to the troops was really to urge a fallacy so gross that it might almost be called nonsense. The last thing in the world the negroes ever desire to do in an insurrection is to meet the troops. And there were two special reasons in these instances why they did not do so. One was, that there were so few troops, to meet that the difficulty would be mutual of their meeting the troops or of the troops meeting them; and the other was, that their object was not to meet the troops, but to surprise and massacre the white population; and *then*, having obtained arms and ammunition, and the troops being worn out, they might hope, by the combination of craft with overwhelming numbers, to annihilate the military, and make the island their own. This was

the policy they had pursued in Hayti, and in former rebellions in Jamaica ; it was the policy which Gordon had described not long before ; it was the policy the habits of their race suggested to them. In a word, it was not armed resistance which the whites had to fear ; it was not armed encounter in the field : it was *massacre* ; such massacre as had already been commenced, and which for several days the insurgents had striven to continue, not by armed encounter in the field, but by parties of a thousand or two at a time suddenly attacking some isolated bodies of the whites, and slaying such as could not by flight escape from their murderous hands ! Such was the danger which had to be encountered, in a country 120 miles long, in which there were 450,000 of the same race, with the same animosities and the same passions, all rapidly kindling in their African blood, with the quarrels of a generation to avenge ; such was the danger to be met, and to be met with 500 troops ! for these were all that were effective and disposable ! *Was there ever upon earth a danger comparable to this ?* And is it not marvellous that men should be so blinded by partizan feeling as to fail to see it ; and to urge, forsooth, that the blacks did not meet the soldiers in the field ?

The danger, it must be obvious, could only be met in one of two ways—either by distributing small parties of troops through the country, *or* by the deterrent terrors of a tremendous retribution. *Until* the troops could be got, the deterrent terrors of martial law were all that could be resorted to, and they were only resorted to until the troops arrived and were distributed ; not a day longer. The hon. member with his notions as to the nature of a negro rebellion, of course, could not realise the danger, and therefore could not tolerate the measures taken. He took credit to himself for candour in allowing it a duration of a week or ten days, *never mentioning* that on the tenth day the rebels met the troops in the field ! But

the truth is, the hon. member's mind was pervaded by the fallacy, that a negro rebellion is like an English rebellion, or rather (for we have had no rebellion for generations) an English riot. Again and again he speaks of the rebellion as a riot. In the face of the finding of the Commissioners, that it was a planned resistance to authority, which had for one of its objects the obtaining of land, by the extirpation of the whites, and which spread with a singular rapidity over a large tract of country. Never mentioning this, entirely ignoring it, the hon. member talked of "riot," and "rioters." Naturally enough, with this notion in his view, he spoke of the insurrection as only lasting as long as the riot, or as long as *actual* insurrection. In a word he confounded rebellion with *open* rebellion, or with mere riot or actual insurrection. He could not realise the real state of the law, *nearly half a million of one race set upon the slaughter of a few thousands of another*. This he entirely ignored; he never alluded to the finding of the Commissioners which established it; he ignored the *real* facts, and simply gave a story of his own, so remote from the real facts as to bear no resemblance to them. And of course, upon such a statement of the facts, the most just and necessary severities would appear to be excesses. He had evidently not the least idea of martial law or of rebellion. He thought the rebellion was a riot, and martial law the suppression of a riot; not knowing that for *this* martial law would hardly be necessary. He did not realise the necessity for the *deterrent* terror of martial law, in the summary trial and execution of rebels. They were put to death, he said, by way of punishment, not by way of protection. He could not see that punishment is deterrent, and is therefore protective. He relied on the amnesty, reciting that the Governor was certified that the rebels were desirous of returning to their allegiance, and he omitted to mention that the amnesty was conditional upon their returning to

their allegiance, and that they *did not* do so, but that thousands of insurgents remained at large. He complained of men being executed only for *rebellion*, as if the great object of martial law was not the suppression of *rebellion*, and as if rebellion, with the object of extirpation of the English inhabitants, by means of massacre, was not a capital offence. This of itself indicates that the hon. member did not realise what a negro rebellion means. He did not realise that it is utterly unlike anything else upon earth ; for that it means *universal massacre*. It must mean it in the result, partly through animosity of race, and partly through mutual dread of vengeance. Not realising this, the hon. member talked all through of negro rebellion, as if it were an English rebellion ; as if it were a political rebellion ! This was the fallacy which pervaded the whole view of his party. It was amusingly illustrated by an historical parallel he sought to institute between this rebellion and that of Monmouth !

“Upon the whole, exclusive of those that were put to death during what might be called the suppression of the disturbances, and exclusive of those who were shot or hung without trial, we find that just 350 persons were executed by sentence of court-martial. This number, 350, cannot but suggest a historical reminiscence. Some time ago a rebellion took place in one of the countries of Europe. It was the result of a deep conspiracy ; its aim was to dethrone the sovereign and set up an usurper ; its chief actors were deserters from the service of their master and king. They called in foreign aid ; they kindled the flame of civil war, with all the bloodshed, rapine, and misery that civil war engenders. They were overthrown, and the chief actors were tried for their lives—not, indeed, by a court-martial of lieutenants and ensigns, but before the highest court of justice in the land, with every privilege, even with trial by juries of their own countrymen : 350 of them were executed—exactly the same number as in Jamaica. The page of history which presents so curious a parallel has not found great favour in the eyes of the English people. It goes by the name of Judge Jeffreys’ Bloody Assize.”

Now here we have a parallel drawn between an insurrection of infuriated negroes, with the object of extermination by massacre, and a rebellion of honest Englishmen

with a merely political object, and with no idea of slaying their fellow subjects, except upon encounter in the open field ! The simple fact that this gentleman should have drawn such a parallel, shows an incurable incapacity for forming anything like a fair opinion upon the subject. All through his speech, the hon. member implied that Mr. Eyre, as the Governor, was responsible for the excesses, whereas the only case with which he had concern was that of Gordon, and in that case all that he did was to say to the military commander, "Here is such a man, and here is such and such evidence ; you will judge whether it is sufficient, *and if so*, you will try him ; if it is not, then you will not." This was in substance what it was sworn he *did* say to Colonel Nelson in the case of Gordon. (Minutes of Evidence, Colonel Nelson.) And as it plainly appeared that the military commander assumed the power of judging whether the evidence in any case was sufficient to justify a trial, it was wholly unwarrantable to attempt to fasten upon the Governor liability for proceedings of which he had no knowledge, and over which he had no control. In another part of his speech the hon. member actually complained of Mr. Eyre for not having punished any of the parties concerned in excesses, although he knew well that Mr. Eyre had begun to do it, and had actually removed a magistrate and suspended the Provost-marshal, preparatory to his trial, and that there was no reason to doubt he would have gone on in these proceedings had he not been stopped by his suspension, which was mainly obtained by the hon. member and his associates ! To suspend a Governor when he is inquiring into excesses of which he had not known, and then to make him responsible for the excesses, because he had not punished them, was an absurd "excess" of injustice which had, it is hoped, seldom been exhibited. The hon. member exclaimed, "Mr. Eyre never raised a finger against these atrocities," although it was shown in the

evidence, *and admitted by the Secretary of State*, that he *knew nothing* of them; and although, moreover, it appeared that he had issued a general instruction to the Commander-in-chief “that all prisoners who are not *deserving of death or flogging should be released, and that flogging should not be inflicted where it could possibly be avoided.*”

Nevertheless, notwithstanding these undoubted facts, the whole tenor and tendency of the hon. member's speech was to throw the blame of the excesses upon Mr. Eyre. It is impossible to congratulate him on his justice or his candour. And not only so, but the excesses were so enormously exaggerated as to convey the impression that it was *all* excess, and that all who suffered, suffered unjustly and unnecessarily. How utterly unlike the temperate view of the case taken by the Royal Commissioners was the view taken by Mr. Buxton, will appear from the simple comparison of one or two passages in their report with some passages in his speech. He said, speaking of the trials by court-martial :—

“Is there indeed to be absolute impunity for these doings? As regards Lieutenant Brand and his compeers, their guilt cannot be compared for a moment to that of their superiors; but while I say that I will not deny that I would a thousand times rather have followed a son of mine to the grave than have had him sit on that court-martial, and show himself so lost to every sense, not only of humanity, but of personal honour; so dead to every generous youthful impulse, as to have stooped to the utter degradation of being merely the executioner, the hangman, the base instrument used by the authorities for consigning these 400 trembling wretches to the whipping-post and the gallows.* But while our indignation against them is largely qualified by contempt, what shall

* It is scarcely surprising that the unfortunate officer, the object of such violent abuse, should have resented it in a violent letter, the blame of which surely rested on his assailant. It appeared from the evidence that this officer had behaved in the most exemplary manner, and the Government, when he was prosecuted, most properly defended him. He acted under orders, and decided quite in accordance with military law, and the abuse heaped upon him simply arose out of the gross blunder of supposing that he was trying the case at common law! whereas he was trying it by *military law*, according to which the case was clear.

we say of Brigadier-General Nelson, who, day after day, wrote 'approved and confirmed' against every one of their proceedings? What shall we think of the tremendous responsibility incurred by the Governor of the island, who looked on with such cold indifference to the anguish of the people who had been entrusted to his protecting care? My dreary task is done. It is now the grave duty of the House to decide whether it will indeed give its sanction to these doings. It will be understood by the people of England, and in America, and in Europe, where this matter has been watched with great anxiety, that the broad question on which we shall divide to-night is the question whether, on behalf of the British people, we approve or whether we condemn these doings. I trust that, at any rate, the great Liberal party will refuse to identify itself with that butchery."

Such was Mr. Buxton's picture of the case. This was the *Commissioners'* :—

"The number of executions by order of courts-martial appeared to us so large, that it became very important to ascertain, as far as we were able, the principles upon which the members constituting the courts acted, and the sort of evidence upon which their decisions were pronounced. *It would be unreasonable to expect that in the circumstances under which these courts were assembled there should be the same perfect regularity and adherence to technical rules which we are accustomed to witness in our ordinary tribunals ; but there are certain great principles which ought under no circumstances to be violated*, and there is an amount of evidence which every tribunal should require before it pronounces a judgment which shall affect the life, liberty, or person of any human being. In order to ascertain whether these principles have been adhered to, and whether in all cases this necessary evidence has been required, *we have carefully read the notes of the evidence given before the different courts, upon which notes the confirmation of the sentences were pronounced. In the great majority of the cases the evidence seems to have been unobjectionable in character, and quite sufficient to justify the finding of the court.* It is right also to state that the *account given by the more trustworthy witnesses as to the manner and deportment of the members of the courts was decidedly favourable.* But we think it right also to call attention to cases in which either the finding or the sentence was not justified by any evidence appearing on the face of the proceedings."

And then the Commissioners mentioned *three* in which the evidence, on the face of the proceedings, appeared to them insufficient to sustain the finding, candidly adding, that there might have been other evidence, and three or four in which the sentences seemed disproportionate to

the offence, which might be said of an equal proportion of cases at every assizes. This was all—out of 344 cases tried by court-martial! What a contrast to the inflamed and inflammatory statements of Mr. Buxton! They hardly appear to refer to the same case. And be it observed that the Under Secretary for the Colonies, a great abolitionist, even *went further* than Mr. Buxton, and talked of *hundreds of innocent men hanged! the Commissioners not mentioning one single case of an innocent person executed!*

It was obvious that, in the minds of these honourable gentlemen, the general findings of the Commissioners that the punishments were excessive, and the infliction of death too frequent, applied to *all* the executions, and in the *worst* sense; that is, that they were all unnecessary and all unjust; in other words, that the men executed were all innocent. Not a word as to the criminality of any of them escaped either of the honourable members; and one of them used the phrase "*hundreds of innocent men.*" It is important to bear this in mind, for this was the ground of the agitation against the Governor, which was the real cause of his recall. How opposed it is to the view of the Commissioners has been seen. The *general* findings of the Commissioners, however, were taken without any qualification or correction by the light of this *particular* finding; and, as already said, in commenting upon their report, beyond all doubt, their general findings were exceedingly vague and likely to mislead. Yet, *from* these particular findings, it is manifest that the excesses were almost entirely in the earlier portion of the duration of martial law, of which they said most truly:—

"We fear that this to a certain extent must ever be the case when the ordinary laws, framed for the suppression of wrong-doing and the protection of the well-doer, *are for a time suspended.* The circumstances which are supposed to *render necessary their suspension* are almost sure to be such as to excite both fear and passion, and some injustice."

And of which the Secretary of State had said:—

"In the *first alarm* of such a disturbance, it cannot be expected that it will be possible for him to restrain all persons acting under martial law within the bounds which his own discretion would prescribe."

And though the Secretary of State had added—

"But if it were deemed necessary to continue martial law, it was the duty of the Governor to inform himself of the character of the proceedings taken, and to put an end to all proceedings which were not absolutely necessary, and therefore justifiable on the ground of necessity. Her Majesty's Government cannot, therefore, hold the Governor of the colony irresponsible, either for the continuance or for the excessive severity of those measures"—

it is obvious from the terms here used, especially coupled with a previous passage marked by Mr. Cardwell and his usual kind consideration, that this meant a constructive, not a personal responsibility.

"Her Majesty's Government do not impute to Mr. Eyre any *personal* responsibility for these measures of severity. He was only *generally* informed," &c.

What was meant by the Secretary of State evidently was, not that Mr. Eyre *knew* of excesses and allowed them to go on, but that he had not thought of issuing instructions or taking precautions to *prevent* them from happening, or had not taken due measures to keep himself informed of what was done. What a contrast this to the cruel charge conveyed by Mr. Buxton, in the passage above cited !

"What shall we think of the tremendous responsibility incurred by the Governor of the island, who *looked on with cold indifference* to the anguish of the people who had been entrusted to his protecting care ?"

This plainly and expressly implied that personal liability, that personal inhumanity, or indifference to inhumanity, which the Secretary of State had *expressly disclaimed imputing*, and for imputing which there was not the shadow of an excuse in the evidence.

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Then as to the alleged excesses, and the absence of control over the execution of martial law during the *continuance*, the Commissioners stated in effect that there were no excesses during the period of its *continuance*, for it appears that during that period the punishments were by sentence of court-martial; and they stated that in the great majority of cases the trials were proper, and the evidence fully warranted the sentences, with very few exceptions, specified. And the only excesses they state occurred during the former portion of the period of the duration of martial law in the first hot rage of pursuit, and the Secretary of State admitted as to this that the Governor could not be responsible. He wrote, indeed,—

“The Government agree entirely in the words which you have used, that much which is now lamented might have been avoided if clear and *precise instructions* had been given for the regulation of the conduct of those engaged in the suppression, and every officer had been made to understand that he would be held responsible for the slightest departure from those instructions. It does not seem reasonable to send officers upon a very difficult and perfectly novel service without instructions, and to leave everything to their judgment.”

But neither the Commissioners nor the Secretary of State said a word to show that this was the duty of the Governor, and, on the contrary, the words here quoted are the words of the *Commander-in-chief*:—

“The Major-General can give you no instructions, and leaves all to your judgment.” (Letter of Major Elkington, A.D.C. Minutes of Evidence, p. 1120.)

The instructions to colonial governors, however, not only do not indicate that there is any power in the Governor to issue such directions to the troops, but plainly imply the contrary; and Mr. Cardwell added:—

“I think it is due to Mr. Eyre that I should accompany this observation by the statement that, in the instructions to colonial governors, no reference is made to the possible occurrence of such an emergency as that in which

he was placed. How far it may be possible to frame general instructions which might assist the Governor in the case of future disturbances arising in any colony, is a subject which will receive careful consideration at the hands of her Majesty's Government."

There being, then, no *special* instructions on the subject, it would be governed by the general instructions to colonial governors, which distinctly express that the arrangement of details is to be left to the Commander-in-chief. And it will be observed, that after many months for consideration, the Secretary of State cannot make up his mind whether it was possible to issue instructions to the *governors* of colonies, or to guide them in such cases. And it had escaped his observation that it could hardly have been culpable that the *Governor* had not issued instructions to the *military officers*, encroaching on the proper province of the Commander-in-chief. The independent position and function of the Commander-in-chief of a colony, however, was totally lost sight of throughout these discussions; and it was evidently assumed that he was subordinate to the Governor, and that the officers were responsible and subject to him; whereas, on the contrary, the Commander-in-chief of a colony is not even responsible to the same department as the Governor, but to another, and the officers' reports go to the Commander-in-chief and the War Office, and not to the Governor or the Colonial Office. Not bearing this in mind, Mr. Buxton assumed that everything that was done was reported direct to Mr. Eyre, and that thus Mr. Eyre knew at once what was done everywhere by everybody. But so far from this, the military reports only included what was done by the orders of the military officers, and these went direct to the Commander-in-chief, and were seen, if at all, only casually by the Governor; and these did not include the proceedings of courts-martial, which, with the single exception of Gordon's case, were retained by the military commanders. Not bearing all this in mind, Mr. Buxton, with a loose notion

in his mind that because Mr. Eyre was Governor he knew what was done everywhere by everybody, and was liable for everything, spoke of his looking on with cold indifference, and *allowing* all the excesses that had been perpetrated. And it was upon this kind of notion Mr. Eyre was condemned. Yet, from the findings of the Commissioners, it appeared that the excesses, with hardly any exceptions, took place in the first rage and heat of pursuit, when, as the Commissioners and the Secretary of State had candidly admitted, *no one* could have prevented them, and that the instances of hasty or improper executions after that time were but the rare *exceptions*; whereas Mr. Buxton took them as illustrations, and thus first produced the impression of great excesses during the latter portion of the period, and then, through the wrongful assumption that Mr. Eyre was acquainted with all that was going on, threw the whole odium upon him. The speech of the hon. member, in fact, consisted, for the most part, of a recital of all the instances of excess he could collect, and a wholesale imputation of the whole of them to Mr. Eyre, as if he was responsible for everything done by everybody in every corner of the colony! And this was the theory and the view upon which Mr. Eyre had been condemned. It was easy in this way to make a very sensational case against him. But, on the other hand, in this way the most humane of men may be condemned; and it was forgotten by Mr. Buxton that Mr. Eyre, though he had no *power* over the Commander-in-chief, nor power to issue instructions to the officers, wrote to the Commander-in-chief earnestly suggesting that only those who deserved death should be executed, and that flogging should not be inflicted where it could be avoided. Had Mr. Buxton recollected this he would not have spoken of the Governor as "looking on with cold indifference" to the fate of those entrusted to his protecting care. But alas! all this was forgotten. The views of the hon. member, however—

extreme as they were—far less extreme than those of an hon. gentleman who had been Under Secretary for the Colonies at the time these events happened and the Governor was recalled, and his speech is most important, as showing plainly that Mr. Eyre was recalled under the most monstrous misconception as to the facts. The hon. gentleman took credit to himself for moderation in not being in favour of *prosecution*, but he went far beyond those who *were* so ; and it is remarkable that he and Mr. Buxton were more violent in their representations of the case than those who were promoters of the prosecution. The hon. gentleman's view of the case throughout was pervaded by as utter an absence of any notion of the real nature of the case as Mr. Buxton's ; and he never once alluded to the statements in the report, which *showed* its real character. He said—

“Two views had been advanced, the one by the hon. member for East Surrey, which meant approval of the censure on the Governor of the colony for unnecessary severity, and the other by the hon. member for Westminster, that the House should turn itself into a public prosecutor, and institute proceedings against the Governor and other persons. He agreed with the proposal of the hon. member for East Surrey, but not with that of the hon. member for Westminster. He did not accuse Governor Eyre of intentional cruelty, but he thought the House bound to pass a decision on his acts. The object of martial law was suppression, not punishment ; but executions had taken place after the suppression of the insurrection.”

That is, of the *intended* insurrection. It was forgotten that the object was the suppression of rebellion, and the renewal of *danger* of renewal of the insurrection.

“Take Morant Bay : 186 executions took place there after the insurrection was suppressed ; 180 after Captain de Horsey said the insurrection was over ; 161 after Governor Eyre left Morant Bay, and said the insurrection was suppressed. These executions were under the superintendence of General Nelson, who in October signed an order for the trial of the ringleaders. After issuing that 124 persons were executed, three of them being women. Thirty were charged with attempts to murder—only five were ringleaders—and eighty-two were charged merely with rebellion, or with rebellion, plunder, and riot. After the outbreak was entirely suppressed,

from ten to fifteen per day were executed on the mere charge of murder. Such a case he did not think could be found in all their annals. Even if all of them had committed murder it would have been considered an outrageous thing to have executed them all. The murder of Mr. Hire was, no doubt, barbarous, but what would be said if for a murder in Ireland 130 persons were executed? Most of the men were not charged as murderers, but as rioters only."

All this was entirely unlike the statements of the report, which showed that in nearly all the cases—in all but a few exceptions—the findings were justified by the evidence, and the sentences by the findings! The exceptions under each head, at all events of *capital* cases, amounted to *three*! But throughout the above observations it will be manifest that the hon. member had no notion that the scope of martial law is the suppression of rebellion, and that this was a most formidable rebellion. He was thinking of the case as if it had occurred in this country, and did not recognise the *danger* nor understand that the punishments were deterrent. He speaks all through of "outbreak," of "insurrection," and even of "riot" or "rioters." If he mentions rebellion he speaks of it as something quite trivial, just like riot, "*merely* found guilty of rebellion," just as it would be in this country, where the nearest approach to rebellion likely to take place is a riot. The views of those who condemned Mr. Eyre will be found to have been pervaded throughout by this fundamental fallacy. They had no notion in their minds of a negro rebellion. Every sentence shows an entire ignorance of its nature. "What would be said if in Ireland 130 persons were executed for a murder?"—that is, as is here represented, a single isolated case of murder. But suppose it was one of a score or two of murders, in which *thousands* had taken part, with a view to a *general massacre*!

"It was said that what had been done was in order to prevent the insurrection spreading to other parts of the island. If they were to apply that to Ireland, what would be said if 300 were executed in Tipperary for an insurrection that had broken out in Galway?"

But what had been done was nothing like that. It was simply this, as though men had been executed in Tipperary to prevent the insurrection from spreading into Galway. There was not the least pretence for saying that men had been tried and executed except for acts done within the district which was the scene of rebellion, and it was a most inexcusable misrepresentation to suggest that it was otherwise. But it is obvious that, in the view of the hon. member, it was a case of mere riot, or of local insurrection, which was over as soon as the actual outbreak was put down. He had the idea in his mind of an English riot, and this is what it would be. He had never paid the least attention to the statement in the report of the Commissioners, of a "planned rebellion" of a race in a war of extermination, "spreading with singular rapidity over a vast tract of country," covered with the teeming myriads of that race. He thought merely of an *ordinary English riot*. This is the view taken by a gentleman who may have charge of our colonial interests, of an insurrection of negroes or of natives, against those of English birth and descent. He regards it as if a mere English riot. All through his speech ran this fallacy, that insurrection in a colony, even a negro colony, was just like a riot at home, and should be treated entirely in the same way. This is the view, be it observed, on which Mr. Eyre was condemned. This is the view of the Minister who recalled him:—

"He thought that Governor Eyre had made a mistake, but that he had acted for the best, and that the particular circumstances in his case formed a strong reason against further proceedings against him. The law of Jamaica actually left the lives of the people at his discretion, and he was almost forced to declare martial law. There was no reason to suppose that he was actuated by any bad motive in the use of the discretion given to him. Such being the case, it was the more necessary that the present Government should do what the late Government were prepared to do, namely, to look seriously into the state of the law in Jamaica, and in the rest of the West India colonies, with regard to the proclamation of martial

law. It was clear, he thought, that it was not martial law, but the action of the troops, that put down the outbreak. It was also clear that if they continued to impose on their governors the proclamation of martial law in such outbreaks, it was their duty to regulate and define it. They ought from what had occurred to receive a warning to be much more careful in future in allowing martial law to be declared; and for his own part he thought that martial law ought not to be proclaimed so long as the troops were able to act with efficiency without it."

As if anybody had ever hinted such an idea!

"They knew that in this case this condition of things did not exist, because the troops, in fact, put down the rebellion."

But with the aid of the terrors of martial law, which enabled a mere handful to do it!

"He did not, however, blame Governor Eyre for declaring martial law; for seeing that that law had been on former occasions declared in Jamaica, and there being a law which almost told the Governor to declare it, under such circumstances he would naturally feel that he would be severely blamed if he did not declare it. His own opinion was that the Government should look very seriously into these Acts as to martial law, in order to see whether they could not be repealed, and the matter placed upon the *same footing in the colony as it was in England*. He believed that the law in Jamaica was this—that the Governor, with the assent of his council, could at his discretion suspend the law, and put the whole colony under military authority. *This was not the law in this country, and ought not to be in Jamaica.*"

That was the view upon which the hon. member and those who thought with him proceeded, and that was the view upon which Mr. Eyre had been recalled, that there is no difference in character or danger between a rebellion of negroes, in a colony where they enormously preponderate—a rebellion for the purpose of extermination of the English—that there is no difference between this, and an English riot!

This was the view avowed in the face of Parliament by the Minister who recalled him! The more the views of the hon. gentleman who represented the Government which recalled Mr. Eyre are analysed, the more manifest

it will be that the recall proceeded upon an entire misconception of the whole nature of the case. The hon. gentleman who had been Under Secretary of the Colonies was aware that, in previous cases of martial law in the colonies, his own predecessors in office had vindicated a similar exercise of martial law; but the manner in which he described those cases, which were mere political risings, showed that he had not the least notion of the distinction, or rather the contrast, between those cases and the present; indeed, as he described them, they would hardly be recognised. His description of the Ceylon case in particular, of which the reader has already had an opportunity of judging, bore *no resemblance to it* :—

“He did not know any case in which a governor had acted in the same way. They all remembered the outbreak in Cephalonia in 1859. In that case the troops were under fire for four days—martial law lasted for more than a month, yet only twenty-one persons were executed against 354 executed in Jamaica. The case of Ceylon in 1848 was something similar to the present case. A motion was brought forward with regard to the suppression of the rebellion in that island, and it was thought that the measures of suppression had been too severe. A select committee inquired into the case, and made a report on it to the House. In May, 1857, the hon. member for Inverness moved a resolution which in its object was similar to the present, and called on the House to express an opinion that the punishment inflicted in suppressing the disturbances had been excessive and uncalled for. The right hon. gentleman, the member for Bucks, on that occasion supported the motion of the hon. member, and stated that he did so because he believed that the policy which had been pursued was a policy of passion, and that the safety of the empire would be in peril if they allowed such a policy to pass uncensured. Now, this was a stronger case than that of Ceylon, for in the case of Ceylon our power was really in danger. An official account stated the number of natives engaged in the rebellion at 60,000. There were three actions with them; it was said that the priests had prepared the people for a war of extermination, and martial law lasted for ten weeks, yet only *eighteen* persons were executed.”

Those who have read the account of it in the Introduction will be able to appreciate this account of it, which is in every respect the *reverse* of what it really was. And this will enable the reader to appreciate the hon. member's opinion of the present case :—

“He could find no precedent for the proceedings in the outbreak in Jamaica. It could not be compared to the previous outbreak at the time when the negroes were greatly excited. It was not too strong a word for him to use, to say that these 354 persons were legally massacred. There was no precedent for that, not even in the acts of Russia in Poland, or of Austria in Hungary. There was no instance he knew except that in which so many persons had been executed with so little to justify it on the ground of justice or necessity.”

No doubt, according to the hon. gentleman's account of the case, ignoring all the elements of danger, and all the crimes committed, and looking only at the punishments inflicted, the late Under Secretary of State for the Colonies showed the most entire and unaccountable misconception of the effect of the report of the Commissioners as to the excesses, a misconception, however, no doubt partly attributable to its *ambiguity*. He said—

“The conclusion of the report condemned the unnecessary frequency of the executions. That expression, when tested by the evidence, *meant the killing of hundreds without need and without justice.*”

On the contrary, “tested by the evidence,” as has been shown it meant, that all but a few were *justly* executed, for the Commissioners reported that in the great majority of the cases tried by court-martial—*i.e.*, 354 out of 432—the trials were fair and proper, and the evidence sufficient, which shows, at all events, that the executions were not “unjust,” and that if any of them were “unnecessary,” it was only a *portion* of them, and only in the sense, that the men *might have been executed under ordinary law*, which makes an enormous difference in the moral view, whereas the hon. member represented, and evidently was under the impression, that all these persons were innocent, or were *unjustly* executed, for he added—

“It is not too much to say that these 354 persons were legally *massacred.*”

The author ventures to think that this was a great deal too much to say when a Royal Commissioner had in effect

reported that the great majority of these men were *justly executed*, and had not ventured to report that one single man was *innocent*; on the contrary, had the candour to say that, even out of the few instances they specified as convicted without sufficient or proper evidence, there were several in which there was other evidence than that disclosed, or that the guilt was afterwards substantiated, which suggested that the guilt might have existed in other instances, *even* in the cases where it had not been sufficiently proved. After the most searching and rigorous inquiry, however, the *Commissioners were not able to state that a single person executed upon trial was innocent*; and they could go no further, in the case of Gordon even, than state that the evidence, in their opinion, was insufficient to sustain the charge; and they stated facts which showed that he was really guilty of its substance—that is, of intentional incitement to insurrection. And in the course of the debate Mr. Russell Gurney, the principal legal Commissioner, being expressly challenged on the point, contented himself with reading the terms of their finding on the case, adding—

“I do not shrink from what is stated in the report, that we were of opinion that there had been very questionable speeches and writings on the part of Gordon—matters that might *possibly have subjected him to an indictment for sedition*; but that was a totally different thing from the crime for which he was convicted, and would not justify the sentence passed upon him.”

But it will have been seen this was *not* what the Commissioners had reported. They had distinctly reported that he had used *language calculated to incite the negroes to massacre, which was so understood by those to whom it was addressed, and naturally so understood, and that this, in substance and effect, was the charge on which he was convicted. This is what the Commissioners had reported, and no one knew better than the Recorder that by the law of England, the man who has used such language*

must be taken *to have meant to incite to massacre*, and that this is very different indeed from mere "sedition."

It never appears to have occurred to the Recorder that the man was tried under military law, by which it is capital to incite to insurrection, with whatever intent; and that this was included in the charge, and was indeed its substance, even at common law. No one knew better than the Recorder that if a man uses language calculated to incite others to the murder whether of specific persons or persons of a specific class, and those who are thus incited *do* commit those murders, the man who so incited to the murders is liable for the murder, and that it matters not a straw that the murders are committed on a day he did not design, or direct, or intend. No one knows better than the Recorder that he who has incited to a crime is as guilty of it as if he actually committed it, and that he who has incited to a murder is a murderer.* And therefore it would have been better had he told the House of Commons candidly that the legal effect of his finding in Gordon's case was that, having used language calculated to incite to murder, he was guilty of murder, and that all he meant by his finding was, that the evidence did not expressly show that Gordon actually directed the particular massacre, or the massacre on the particular occasion.

The case of Gordon, however, was only one of many cases which must be looked at on the same general principle, and the governing principle was *danger*. This

* The Recorder had reported that Gordon had used language calculated to incite the blacks to murder the whites, and had used that language *to the very men who had committed the massacre*, and that they had so understood his language, and *that they had naturally so understood him*. That being so, it has been decided again and again by the Court of King's Bench and other Courts, and is clear law, that he must be taken to have *meant* what his language naturally would convey. Then Gordon had intentionally incited the murderers to a massacre of the whites. Thus he was an accessory before the fact, whether or not he had intended it should take place on that occasion.

was admitted even by Mr. Buxton. The hon. gentleman, however, had the boldness to admit that if indeed the danger was really so great as represented, then he would not say that almost any amount of severities could be deemed excessive. This was the most important part of the debate, for as it was admitted that the danger was *fully* as great as represented, it implied an admission that there had been no *authorised* excesses; that no severities *authorised* were excessive. Now the late Under Secretary, Mr. Forster, no doubt from his extreme abolitionist views and prejudices, agreed with Mr. Buxton, and even went beyond him in denying the danger. But far otherwise was the view taken by the late Secretary for the Colonies, Mr. Cardwell, and the Recorder, the chief legal Commissioner. The Recorder, with the utmost candour, showed the real nature of the rebellion and its formidable character and deep-seated and widespread causes:—

“There was a general idea among the black population that all the ‘back lands’ had been the property of the Queen, and that the Queen had made them over to the negroes. That was the notion which existed among the blacks about the land; and the originators of the outbreak took advantage of the excitement upon that subject in order to produce the disaffection which undoubtedly prevailed to a large extent in the island. But we cannot ignore the planned rising among the negroes; the actual drillings which went on among the people; their formation into companies, with colonels and captains appointed over them, and the speeches addressed to them, in which they were told that the time would come when they would obtain the advantages promised to them by those who originated the outbreak. We find, from what occurred afterwards, that there was a great deal more in the outbreak than a dispute about land. Throughout the few days that the outbreak lasted, the war-cry and watchword of the negro was, ‘Colour for colour! The buckra country for us!’ the said word ‘buckra’ being the negro term for the whites. Then a different course was pursued from what was followed in other insurrections. Formerly the regular course was to set fire to the planters’ houses, and burn down the estate buildings. In this case, however, they were left untouched, the cry being, ‘No touch houses; we want them for us!’ At another place the plan was distinctly announced, that on the following week, *after the negroes had possessed themselves of the whole country*, they would come down and

take up the crops, because the white population would then be driven away, and be no more seen in the island."

Now it seems scarcely credible that the right hon. gentleman who made this forcible statement of deeply-cherished passion among the negroes for the *land*, and of a deeply-seated desire in the negroes to drive away the whites and get possession of *the whole island*, who had thus described the war-cry as one of colour and the rebellion as a war of race, should have reported that there was no general conspiracy, which of course by itself would convey the idea that there was no conspiracy for a general rising, without at the same time adding, what it is manifest he was very well aware of, that a local rising under such circumstances *must if successful rapidly have become general*, and that therefore the *case was practically one of as formidable a danger* as if there had been a general conspiracy for the rebellion. The Secretary of State, with more candour, had expressly so stated in his despatch; but, on the other hand, that only made it more unaccountable that he should have pronounced a censure upon the ground of excess, proceeding upon the same view as if there had been a mere temporary local outbreak. Mr. Buxton himself acknowledged that if the peril were indeed as formidable as had been represented, and the disparity of force as great, he should not be disposed to think there had been any great excesses, at all events in what had been authorised or allowed by the Governor; and he put the case as a *denial* of this formidable danger. The Commissioners and the Government *admitted* the formidable danger, and yet censured as excessive, measures which it was admitted would not be excessive if the peril were indeed so formidable! Such was the way in which the Governor was judged! As an hon. member put it (Mr. Baillie Cochrane)—

"There were 400,000 blacks in Jamaica, and only 15,000 whites, and

what would have been Mr. Eyre's position if he had not used these measures, and there had been a general massacre of the whites?

Supposing he had acted contrary to the advice of his council and the Commander-in-chief, and spared Gordon and terminated the exercise of martial law, and that the negroes, taking courage, had made a "rush" and swept the whites away, would not the very men who now blamed him for acting on the advice he received, have declared him inexcusable for not doing so! Mr. Cardwell said:—

"We are told that no great danger existed. But such is not the language of the Commissioners. In their report they speak of a formidable rebellion. Do we not know that *forty miles of country were for days in possession of the insurgents, that houses were gutted and in flames, that loyal inhabitants of the district had been killed, that the police were murdered, and the magistrates flying with their families?* The Commissioners say that, though the original design for the overthrow of constituted authority was confined to a small portion of the parish, yet *that the disorder spread with singular rapidity over an extensive tract of country, and that such was the excitement prevailing in other parts of the island, that had more than a momentary success been obtained by the insurgents, the ultimate overthrow would have been attended with a still more fearful loss of life and property.*"

Yet the Minister who thus fully and justly described the magnitude of the peril removed the Governor because, with the advice of his council, he continued martial law in force only until military reinforcements had arrived and *had been distributed*. No trace is to be found in Mr. Cardwell's speech, any more than his despatch, of any attention to this *latter* consideration. And so, on the other hand, it plainly appears from his speech and despatch that he was under an entire misapprehension as to the alleged excesses, and had looked only at one side of that part of the case. No one could more forcibly have described the terrible and formidable character of the danger. He was not one-sided in his view as to *that* part of the subject, as others were:—

"Let any one read in the evidence the records of those atrocities

which were at first reported to me in the despatch of Governor Eyre, and he will not only be deeply shocked, but will feel that those who had to deal with them in the first pressure of the emergency were not likely to view any of the details with the calmness, the impartiality, and the dispassionate judgment which we are now able to bring to the consideration of the subject. In dealing with Mr. Eyre, we ought to remember the state of things at that time among the black population of the Southern States of America, that a civil war was going on in the neighbouring island of Hayti, and that he was suddenly called upon to face the emergency which arose in a manner as much unexpected by him as anybody else. Entertaining what proved to be an erroneous consciousness of safety, he had allowed nearly the whole squadron to leave the island, and at the moment *the force of troops at his disposal was not sufficient to secure the permanent restoration of order*. Surrounded by the families of those who had lost their relatives in those dreadful atrocities, and by the tears of those who brought to him, sometimes truly, sometimes in exaggerated terms, appeals from all parts of the island, you must bear in mind the difficulties of the position in which he was placed. And you ought not to forget that if there was one man who, amidst all these anxieties and alarms, did retain some portion of his self-possession and his courage, that man was Governor Eyre. When a proposal was made to him to put Kingston under martial law, he was firm enough to refuse. And when, still later, the suggestion was made to him by a brave and experienced officer, whose recommendation was indorsed by the General in command, that other parishes should be put under martial law, Governor Eyre was the man who rejected the proposal. It is our duty not to forget these considerations; and we therefore did cordially agree with the Commissioners in giving credit to Governor Eyre for the vigour and promptitude with which he acted."

It is difficult to realise how the Minister who so powerfully and generously described the danger with which Mr. Eyre was called upon to deal, and his vigour in dealing with it, should have dismissed him merely for an assumed error of judgment in the manner of dealing with it. It can only be accounted for on the supposition that he had been misled by the equivocal and ambiguous statements in the report of the Commissioners. It will be observed that these statements of Mr. Cardwell fully bore out Mr. Eyre's case, as to both parts of it, the magnitude of the danger, and the deficiency of the forces at his disposal to meet it; and that there is an entire inconsistency between

his view and that of Mr. Buxton the principal promoter of the inquiry. That gentleman, it has been seen, admitted that if the peril were indeed so great as was represented *he should not say there was much excess*. Mr. Cardwell distinctly declared the peril to have been as great as Mr. Eyre had represented, and the logical result, according to Mr. Buxton's admission, would be that there was no material excess. Yet Mr. Cardwell carried out Mr. Buxton's demand for the dismissal of Mr. Eyre. That is to say, he does so upon a view of the case which Mr. Buxton himself admitted would *not warrant* such a course. So manifest is the injustice which this unfortunate gentleman has suffered, that they who have inflicted it could not even agree among themselves why they did it, or upon what grounds it could be maintained! Mr. Cardwell said:—

“We are told that no great danger existed, but such is not the language of the Commissioners.”

Mr. Cardwell, however, failed to observe that those who said there was no great danger, admitted that if indeed the danger was so great then there were no great excesses. Mr. Cardwell frankly admitted the greatness of the danger, and yet came to the same conclusion as to excesses:—

“The continuance of martial law for so long a period *after* the rebellion was subdued, the execution and flogging of so large a number in pursuance of the sentence of courts-martial, were proceedings which it is certainly impossible to do otherwise than in the strongest way to deplore and condemn. The punishment which has fallen upon Mr. Eyre has been deeply felt. I have not the honour of his acquaintance, but I believe him to be a man of courage and of humanity. I deeply deplore his error, but I am convinced that he acted with a real belief that he was discharging his duty.”

The Minister who could speak in such kind, considerate, feeling terms of the man he had displaced, cannot have done him any injustice except under some mistake; and it is manifest from his own language that he had formed his

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opinion under a complete misapprehension, owing partly to the ambiguous terms of the report, and partly to a forgetfulness of the matters disclosed in the despatches. Those despatches showed that the continuance of martial law was not prolonged a day after the distribution of the reinforcements; and as to the alleged excesses Mr. Cardwell was evidently under the impression that the report showed excesses in the execution *under sentence of court-martial*; for which alone, it is obvious, in his opinion, the Governor could not in any sense be deemed responsible. But this as has been shown was an entire error. The Commissioners say, indeed, the punishment was inflicted too frequently, but that left it wholly uncertain what they meant, either as to the *number* or the *nature* of the executions, and whether it meant that guilty men justly sentenced were executed too frequently, or that *innocent* men unjustly sentenced; and, moreover, the phrase "too frequently" is so vague that it might mean simply that half a dozen guilty men were executed whose executions might have been left to ordinary law. And this view is confirmed by the other part of the finding, that in the majority of the cases the *evidence was sufficient* and proper in its character, and the further statement, that even in the few instances they specify of a contrary character the men might have been and in some cases were actually proved to have been guilty. So that the supposed excesses in the *executions under court-martial*, for which alone the Minister held Mr. Eyre responsible, dwindled down to very small proportions, and the real excesses, as the rest of the report shows, were committed by soldiers *without orders*. It is manifest from this reference to the real result of the report as compared with the language of Mr. Cardwell, that he had been entirely misled by its equivocal terms, and that he had recalled Mr. Eyre under an entire misapprehension of the effect of the statements. It can as easily and as clearly be shown from his own language

that he had taken this severe measure, or at all events justified it, under an entire error as to Mr. Eyre's reasons for the course he took. Mr. Cardwell went on to say:—

“It appears to me that Mr. Eyre fell into the mistake of considering that because a month was the extreme limit of the period limited by the statute for the duration of martial law when once proclaimed, therefore its continuance for a month was justifiable, irrespective of any continuing necessity for it.”

It may safely be said that there is not a line in the despatches, nor a single word in the evidence, nor a sentence in the report, which would justify this statement, and it may be added, that this was the first time the suggestion appears to have been made. It is not even glanced at in Mr. Cardwell's despatch recalling the Governor. It is never hinted at by Mr. Eyre. It is contrary to the whole tenor of his despatches, and the whole effect of his evidence. It is contrary to the reasons he assigned for the maintenance of martial law, in the evidence quoted by Mr. Cardwell himself in his final despatch. If the idea now suggested by Mr. Cardwell was the impression under which he recalled Mr. Eyre, then it is manifest the recall was under a mistake. If it had only since occurred to him for the first time it was an after thought, to excuse the recall. So far from Mr. Eyre having ever taken such a ground, he always asserted his belief that the continuance of martial law until the reinforcements had arrived and were distributed was *necessary for the safety of the colony*. And the sincerity of this belief Mr. Cardwell fully and frankly attested:—

“I do not think that any one who has a due regard for truth can deny that Mr. Eyre really shared the belief universal at the moment among all the white and coloured inhabitants of the island, that a conspiracy for their destruction did exist, and that Gordon was to a great extent guilty of promoting it.”

Nor was this all, the Royal Commissioners had reported

that there *was* such a conspiracy, which although they thought it only local in its origin, would they said have rapidly become universal if successful, so that it was in effect the same thing as a general conspiracy, and they also reported in effect that Gordon caused it, and that although a local conspiracy it was certain to spread, and did spread, with singular rapidity. The late Secretary of State therefore, with every disposition to do justice to Mr. Eyre, certainly did not do him *more* than justice upon this matter.

Even Mr. Cardwell could not forbear from exposing, even while *supporting*, the one-sided spirit in which Mr. Buxton acted, and the one-sided spirit in which his resolutions were carried, so he not only deplored the excesses, but sought to release and compensate all the prisoners guilty of rebellion, and called for the *prosecution of those engaged in the suppression!* After alluding to Mr. Eyre's case the right hon. gentleman said:—

“Then comes the question whether we ought to bring him to trial. The late Government did not consider it consistent with their duty to do so, for he shared in the universal belief that a conspiracy existed, and that Mr. Gordon was to a great extent guilty. With regard to martial law, the maxim which has been laid down is this—Where the law is silenced by the noise of arms, the rulers of the armed force must prevent, as equitably as they can, those crimes which threaten their own safety and that of society. But as soon as the law can act every other mode of punishing supposed crime is itself an enormous crime. On that principle we have acted in the instructions which we have given, and I understand that the present Government adhere to those instructions, and that the Governor of the colony is proceeding to carry them out. I presume that in every case in which it can be supposed that there was not the most perfect *bond fide* in the conduct of the persons engaged, the necessary proceedings are in progress. With respect to the resolutions of my hon. friend, I am sure that his only object is to further the ends of justice; that he has introduced the subject in order that it may be considered by the House of Commons with a view to furthering the ends of justice and promoting the interest of the colony. Looking at the matter in that light, it appears to me that there cannot be the smallest difference of opinion with respect to the *first* resolution. *I entirely concur in the spirit which has dictated the other three.* But I will state the reasons wh^y I hope my hon. friend will not press them to a division. It has not been the practice of the House

to interpose its high authority in any case whilst proceedings are in progress, most especially when they are of a judicial character. It seems more natural that the House should reserve its decision until the proceedings are over before it exercises its authority. Again, in reference to the amnesty, it would be a very strong step to take if a resolution of this House were to declare, not that particular cases are to be inquired into and decided upon their merits, but that, without exception, *the whole body of persons who have been convicted by the ordinary tribunals of Jamaica should forthwith be set at liberty.* There is also another reason which applies very forcibly to these resolutions, when taken collectively. A most able man has just been appointed as Governor of Jamaica. Now, his first object will be to conciliate the confidence of all classes in the island—black as well as white. That, I know, is his desire, and will be his conduct. But he will assuredly be placed in a position anything but favourable to the new government if you fetter him with these resolutions, *the first of which tells him to deal with severity towards the whites; the second, to give an amnesty to the blacks; and the third, to give compensation, but only to the blacks.* It would be far wiser to leave the questions—as to a just severity where excesses have been committed, of compensation where there has been injury, and of an amnesty where an amnesty is possible and reasonable—to be carefully considered between the government of Jamaica and the Secretary of State, rather than to fetter him in the outset with these resolutions. For these reasons I object to support the resolutions, nor do I believe that the end of them would be gained if the House were to agree to them.”

The strange one-sidedness of mind which alone could have inspired such propositions must be manifest, and though the late Secretary of State declared that he entirely concurred in the *spirit* which dictated them, it is to be presumed that he meant the spirit of the hon. member who moved them, in the sense of his general object and intention, which no doubt were excellent, though it is conceived they were strangely misguided by the one-sided spirit of abolitionism. And it is most instructive to observe, that so strong and so violent is this partisan spirit in favour of the negroes, *that it was just as antagonistic to their punishment by the regular and ordinary tribunals of the country, as by courts-martial.* For the men to be released were those who had been tried and convicted by the ordinary courts of law ! Plainly showing, that so far as the abolitionist party were concerned, it was not so much a question of

martial law, as of *any* law at all against the negroes, at all events as regards any rebellion of theirs against the whites. This respectable but somewhat fanatical party plainly do not realise the criminality of a negro rebellion, nor the importance of putting it down; and hence, naturally enough, they regarded all the severities exercised upon the negro rebels as so many atrocities or cruelties; and thus it came to pass that these gentlemen, Mr. Buxton and Mr. Forster, spoke of *all* the executions as if they were executions of innocent men.

Indeed, as has been seen, the late Under Secretary, probably from his extreme abolitionist views, went further than any one in the House, in denying the danger or the necessity for martial law. And not only the Under Secretary but the Secretary of State, Mr. Cardwell, betrayed the unconscious influence of the agitation upon his mind, and very clearly indicated its force; for even while expressing a very different view of the case from that conveyed by Mr. Buxton, and professing his preference for that of the Commissioners, he yet apologised for the extreme views of his hon. friend as not being so very unfair. He said at the outset, describing the excitement which had existed:—

“It would not have been natural that the session should have closed without a discussion taking place on a subject which more than any other of recent times has stirred the feelings of this country, and which has given to those entrusted with responsibility and power the deepest anxiety and pain, and further that it should have been brought forward by my hon. friend the member for Surrey, when we wished to deplore the severity which had been exercised towards the black subjects of her Majesty in Jamaica by those of the white race. I must say that I do not see in the speech of my hon. friend those qualities of unfairness for which he has been censured by my right hon. friend opposite; and, so far as his spirit and intentions are concerned, those who know him must feel that every word which fell from him was uttered from the conviction of his head and the feelings of his heart; but *my hon. friend did nevertheless convey to the House, I think, a different feeling with regard to the complaints contained in the ponderous book which the Commissioners have prepared, than that con-*

veyed by the Royal Commissioners themselves. They were not different in character but in degree, and in a question of this kind degree is all-important, and therefore my hon. friend will perhaps excuse me when I say, that in dealing with this subject *I do prefer the deliberate and careful finding of the Royal Commissioners to the comments of hon. gentlemen who take their views from reading them.*"

The right hon. gentleman, in the course of his speech, very clearly indicated the extent of the influence which had been exercised at the Colonial Office by the most powerful religious bodies and supporters of the Government against the unfortunate Governor, who had become the object of their animosity, and he betrayed this influence most distinctly at the very moment he was apologising for it. He spoke thus of one of Mr. Eyre's most prominent antagonists, the energetic representative of the Baptists :—

"Before I sit down, there is one thing I wish to say. It will be remembered that Mr. Eyre, in his first despatch, mentioned the letter of Dr. Underhill to me as one of the principal causes of the disturbances. As that letter was sent to the Governor entirely through my instrumentality, I wish to say that I consider it was a perfectly *bonâ fide* letter, and sent to me for the purpose of having a practical inquiry into the subject, and if the government of Jamaica expected, or had reasonable ground for expecting, that ill consequences would follow the publication of it, I do not see that it was necessary to have given it publicity in the island.* I will further say, in regard to the persons connected with that letter, that when the despatch was published in the *London Gazette*, nothing could have been more reasonable and moderate than the course they pursued; and of the deputations that came to me in that period of excitement there was not one that was more temperate, reasonable, and sensible than the deputation of Baptists from all parts of the kingdom, who were introduced to me by my hon. friend the member for Bristol (Sir M. Peto)."

No one will suppose that this respectable religious body have any sympathy with insurrection, but that they were deeply prejudiced by their abolitionist views in favour of the negroes, and against the Governor and the island authorities, no one who knows anything of the history of

* According to Mr. Eyre he only sent it to the custodes to be answered.

the subject can affect to be ignorant, and that they had wielded and exerted to the utmost a very powerful influence at the Colonial Office, the above passage would sufficiently indicate, if notorious and well-remembered facts had not already abundantly established it. The inference suggested is not any imputation upon them, but rather an argument for a temperate and charitable reconsideration of the whole case as against *him*. That the prevalent feeling as to the excesses was entertained upon very indefinite ideas on the subject, and that it was rather the result of an acquiescence in the *vague* and *general* findings of the Commissioners, than of any close attention to the facts, as set forth in their *particular findings*, was made manifest in the speeches of the most distinguished members. Thus, for instance, Sir Roundell Palmer said :—

“ He entirely dissented from any observations tending to palliate these excesses. No doubt that in exact proportion as those who administered martial law were removed from the responsibility of the ordinary administration of the law, was it the duty of those in authority over them to look closely after them, and severely repress all excesses and abuses which might be committed. When they looked to the mere numbers of those who had suffered death, even after the insurrection had been practically suppressed, and compared them with the numbers who had suffered on all similar occasions, it was impossible to say that errors, not to say crimes, of a most deplorable character had not been committed. No resolution of the House was necessary, as had been urged by the hon. member for Lambeth, for bringing an action or instituting a criminal prosecution against the perpetrators of these excesses.”

The honourable and learned gentleman said nothing to show that he had given such a close attention to the particular findings of the Commissioners as to be able to state *wherein* these excesses lay which he thus denounced—a matter of the utmost importance with reference to the question as to the parties to be held responsible for them ; neither did he indicate in what sense he used the word “excesses :” and, in the popular sense, no doubt he would

be understood as meaning the execution of innocent men, or of men so rashly or recklessly executed as to leave it wholly uncertain whether they were innocent or guilty. And, from his last observation, it should seem he must have used the term in this sense, for such recklessness would, it is conceived, according to his view, be necessary to support a *criminal* prosecution. Yet, as he spoke of the numbers who had suffered death after the insurrection had been practically suppressed, it should seem he was thinking of the latter part of the duration of martial law. But it appeared from the *particular* findings of the Commissioners that the "excesses" in this, the worst sense, occurred in the *earlier* part of the time, chiefly in the first hot rage of pursuit, and, for the most part, were perpetrated by black soldiers in the absence of their officers. As regards the latter portion of the time, the *executions*, at all events, were by sentence of court-martial, of which the Commissioners had reported, as already stated, that "for the great majority of cases the evidence was quite sufficient to sustain the findings." So that, as regards the great majority of the executions, 350 out of 439, there were, according to the Commissioners, no "excesses," in the worst sense, of *reckless* executions, and *these* were *confined* almost entirely to the earlier portion of the time. How important this is—not merely with reference to the responsibility of the Governor, but with reference to the character of our officers for humanity, will at once be seen; for it surely makes all the difference whether excesses have been committed in cold blood, or have occurred in the first rage and hot excitement of pursuit, after a horrible massacre of friends and fellow-countrymen; and it is to be lamented that the distinction was not more attended to.

And it is very remarkable that throughout the debate, in speaking of the numbers of those executed "on trial by court-martial" (as distinguished from the hasty mili-

tary executions, without trial, in the first hot rage of pursuit), no attention was given to the relative numbers of the insurgents, and of those tried, or of those tried and those *convicted*, or of those *convicted* and those *executed*. It is obvious that the question of excess, with reference to parties fairly tried and found guilty, is one of proportion between these different numbers, and there is a positive absurdity in dealing with the question on the *data* on one side only. Yet this confusion of ideas upon the subject pervaded all that was said about excess; and members, paying no attention to the *data* furnished by the Report, were, of course, entirely in the dark upon it, and were giving expression to vague loose opinions without any further foundation than the mere numbers of those executed, which by itself furnished no light at all.

The fundamental fallacy, however, pervading the debate was the assumption of an entire identity between Jamaica and England, and of a resemblance between a negro insurrection and an English riot! This explains all. It illustrates the fallacy which pervades the whole views of the negro party on the subject. It explains their inability to realise the danger of a negro insurrection, or the necessity for a tremendous retribution, or the necessity for punishing with exemplary severity that crime of sedition, which, as an hon. member truly said, is hardly, by the law of England a crime, because *in this country it is merely political, and never means incitement to massacre*, as it does when addressed to half a million of excitable blacks; and surrounding, in a distant island, a handful of whites, whom they hate with the accumulated hatred of many generations, and animosities of blood and of race. It is this fallacy which pervades and perverts the views of the whole party, and inspires them to arrogate to themselves a monopoly of humanity or philanthropy, because they are so blinded by partisan feeling that they are ready to palliate any atrocities in the blacks they patronise, but

denounce as cruelties the measures of severity rendered necessary in order to avert atrocities, the danger of which they do not realise.

This narrowness and one-sidedness of view was admirably exposed in the able speech of Mr. Adderley, the Under Secretary for the Colonies, who said :—

“I certainly am very much surprised that the hon. gentleman should ask whether the Government approve or not of all the proceedings which have occurred in Jamaica. Does he suppose that there is a single man who approves of these occurrences? What right has he to consider himself the champion of the oppressed, and to consider everyone else who is going to oppose these resolutions as the champions of inhumanity? On what grounds does he do this? He proposes to discuss the question upon the assumption that he is a philanthropist, and that all those who oppose him are the enemies of mankind. It is an assumption very comfortable, but he misunderstands his own resolutions. The staple of his speech is the discussion of the merits of the events and the investigation which have taken place in Jamaica. Nobody disputes them. They have been matters of trial by a properly constituted tribunal, and the evidence and report of that tribunal are before us and the country. There is but one constituted tribunal. There is the evidence before us, there is the report before us, and the Government accept them as the only authoritative decision. The hon. gentleman is mistaken if he supposes we are going to reopen the case—to try it again. We decline altogether to reopen the case. We have not the means to do so. We have not the witnesses. This House is no judicial tribunal. We must take the evidence and the report as given to us. The question which the hon. gentleman proposes is a very different one. The question is, whether it is wise for this House to pass resolutions founded upon that report, and if so whether the resolutions he proposes are those which we ought to adopt. It is all very well for the hon. gentleman to give us his version of the state of things during the insurrection. He made very light of the insurrection. He seemed to consider it a very trifling affair. He said there was much fear, but little danger. Six months afterwards, in his place in the House of Commons, some thousands of miles from the spot, he may think it a trifling affair; but I wonder if he would have taken the same view if he had had the charge of the government of Jamaica at that time. If he really thinks the rebellion was such a trifling affair, let me ask him why he drafted his resolution in such terms—that the House admits that credit is due to Governor Eyre for the skill, promptitude, and vigour which he manifested in the early stage of the insurrection? Last night the hon. gentleman was ready to praise Governor Eyre for the skill, promptitude, and vigour, manifested by him in the early stages of the insurrection, and to-day he is ready to call the

rebellion a mere trifle, and say there was a great deal of fear and very little danger. So much for the consistency of his views and firmness of conviction. Perhaps the House is not aware of the fact that there are threats at this moment of a renewal of the insurrection, and that the authorities in Jamaica have within the last few hours asked for further means of defence against renewed disturbances. The question raised is whether, assuming the Report of the Commissioners and the evidence to be correct, it is advisable to pass resolutions on that report, and if so, whether the resolutions which he proposes are those which ought to be adopted. I must point out the modifications which the hon. gentleman has introduced into his resolution within the last few hours. I presume those modifications indicate some modification of his opinions on the subject. As they were first drafted he asked the House to concur in the last paragraph of the Commissioners' report in condemning the excesses which took place in the suppression of the Jamaica insurrection. He next proposed that we should praise Governor Eyre for the promptitude and vigour with which he had suppressed it, and, at the same time, to approve of her Majesty recalling Governor Eyre on grounds wholly inaccurate and unfair. Thirdly, he asked the House in the fresh draft of the resolutions to advise her Majesty to proceed against other officers who had been guilty of these great excesses. In his second draft these two first were blended into one, in which the phrase 'Governor Eyre' was omitted, and the House was asked to take no notice of the Commissioners' Report, but merely to endorse their censure of Governor Eyre, to approve of her Majesty recalling him, and asking the House to proceed against the officers in the same way.

"Now, if these alterations have any significance, it is clear that what the hon. member wants the House to do is to pick out of the report of the Commissioners all that censures the authorities in Jamaica, and to omit all that in any way praises their action or excuses in any way their excesses in suppressing the insurrection. Now, my opinion is that these resolutions ought not to be adopted by the House. I believe that some of them are altogether inadmissible. I should also object to the last resolution, in which the hon. member proposes to remit all punishments which are unexpired, and to take no proceedings against those who were engaged in the rebellion. Some of the resolutions, if admissible, I think it would be unwise for the House to adopt; and all the resolutions, from first to last, are in a remarkable manner partial and one-sided."

The right hon. gentleman boldly maintained the legality of martial law in time of rebellion:—

"There is one fact which the hon. member seems never to have had presented to his mind, and that is a matter which covers the whole history—namely, that all these events took place under the proclamation of martial law. He as much ignores the facts, as did the hon. member for West-

minster, when he put a long category of questions altogether unprecedented, throughout the whole of which he seemed to ignore the fact that all these events occurred under martial law. *There is nothing in itself illegal in the constitution* of the tribunals under martial law, and the supposition of the hon. gentleman to the contrary is opposed to the opinion of every authority on the subject. This very much narrows the debate, for all that can be alleged on sufficient ground against Governor Eyre is that he continued martial law for too great a length of time, viz., for the full period allowed by law—30 days; that under martial law excessive punishments were inflicted. Well, then, upon these two grounds of condemnation, the hon. gentleman proposes to the House whether it shall or not endorse the decision to which the Commissioners came? With regard to the first resolution, I do not say that it is inadmissible, but that it is unnecessary. We all deplore the excesses that have been described by the Commissioners. Her Majesty, at the opening of the session, informed us that inquiry had been instituted, and promised that the Report of the Commissioners should be laid before us. We thanked her Majesty for the information, we have received the report, and we know what has been done by her Majesty's advisers in consequence of it. But the question now arises, whether it is well that the Legislature should needlessly step beyond its ordinary functions, and should interfere with the province that belongs to the executive. I have no doubt that the House will agree with me when I say that, as a general rule, it is undesirable that the Legislature should assume the functions of the executive, unless in exceptional cases, and for the practical purpose of influencing the executive to do what it would otherwise not do, or to leave undone what it would otherwise do. But we are not asked to do this now. It is not proposed to alter the action of the executive, but the House is asked to declare its approval of the dismissal, as it is called, of Mr. Eyre from the Governorship of the island, and to pray her Majesty to proceed in a similar way against the other officers. The hon. gentleman seems, by the observations which he has made in the resolutions, to have been conscious himself in the first instance that the praise and the blame ought both to be borne in mind. But for some reason which I cannot explain he altered his mind, and finally decided to omit all mention of the praise, and to ask the House simply to endorse the censure. I conceive that this alone is a good and sufficient reason for the House refusing to accept these resolutions. It is all very well to say that we ought not to shut our eyes to the faults of officials, or to screen them from the consequences of their misconduct. But, on the other hand, we should remember that justice is due to them, and there is no reason or right in being just to one side only. Are there any servants of the Crown who have more trying, difficult, and responsible duties to perform than the governors of our colonies? From time to time it happens that they find themselves placed in positions of the most critical emergency, the most onerous duties are thrown upon them, and then, after six months, we review their conduct. I ask whether it is right or fair that all the

censure should be brought into prominent notice and all the praise that has been conferred upon them be set on one side? The suddenness of the emergency in which Governor Eyre found himself can be doubted by no one. Hon. gentlemen opposite have endeavoured to treat with levity the extent of the danger; but the fact remains that at the time it was impossible for any one to say how far the outbreak would extend, and under the circumstances the first and paramount duty of Governor Eyre unquestionably was to consult for the safety of the colony entrusted to his charge. No doubt that it was also his duty to temper his measures with moderation and mercy (cheers from certain benches). The first of the duties I have named hon. gentlemen opposite are silent upon. The second they cheer. They think nothing of the paramount duty of preserving the safety of the community; but when I say that in the discharge of that duty mercy ought to be remembered they loudly cheer. They ask for mercy to those who break the public peace; they are blind to the difficulties of those who have to maintain it. Well, sir, it may be possible to find a governor of a colony who, when insurrection is springing up all around him, and threatening to involve the whole community, can yet preserve a calm and equable mind, and can balance the two duties imposed upon him by the emergency so exactly as to reconcile the claims of justice and of mercy. But such men are rare. Qualities such as these are not a common gift, and you have no right to look for them as if they ought to be displayed by every one who succeeds to the government of a colony. On both sides we must expect to find a certain degree of injustice, some with too strong a feeling, as officials, respecting the means by which disorder is to be suppressed; and some, on the other side, whose sympathies run too violently in favour of those who disturb the peace and good order of society."

The right hon. gentleman, with spirit and sense, spoke in favour of a candid and generous consideration of the conduct of colonial governors in occasions of emergency, and a just discrimination of responsibility for excesses:—

"I am in earnest in prosecuting *those who have been guilty of excesses*, but, on the other hand, why should not justice be dealt out to the governors of colonies. Are there any class of servants of the Crown who have a more difficult task to perform than those who are placed at distant and often unhealthy stations, and confronted from time to time by most trying circumstances, in which they have to act upon their own judgment at a moment's notice, and have the most onerous and responsible duties imposed upon them. Are they to be treated with the scantiest justice, and are we to omit all that can be said in their favour, and carefully to collect all that can be said against them?" "The honourable member has spoken with levity of the amount of danger which Mr. Eyre had to encounter, but he will not dispute that the emergency was sudden, and that it is not very easy

to see at one moment how far insurrection is likely to extend. The danger having arisen suddenly, and having primarily to consult for the safety of the colony committed to his charge, he felt that to be the paramount duty to his sovereign. No doubt he was also bound to temper his measures with moderation, but we must not be blind to the difficulties of his position. It may be possible to find a governor of a colony who, with insurrection springing up all around him, and the knife of the assassin at his throat, has all the calmness and composure of mind necessary for the balancing with rigid exactness these two conflicting duties ; but such men are rare. It is not every man who is able so to hold the scales through the difficulties of a terrible crisis."

The right hon. gentleman also commented, with great and just severity, upon the conduct of those who, being aware of the prosecutions which were pending, had got up the present debate :—

"It is not in keeping with judicial proceedings that they should come here to announce, in the midst of condemnation, their appeal to future judgment. Holding the opinions they do, they ought to have done their utmost to prevent the debate. *It is monstrous, it is contrary to every principle of justice, that an hon. member should come here to prejudge the case, and prejudice the decision,* which he considers ought to be left in the hands of a jury who would have to decide upon a question of life or death."

Nor did the right hon. gentleman shrink from incurring the unpopularity of a spirited declaration that he was far from satisfied even as to the justice of Mr. Eyre's recall :—

"With regard to the recall of Governor Eyre, I do not think that the case against him is made out, even taking the facts as we get them from the report. The law of the case is by no means settled. The illegality of Gordon's trial is a question still undecided. He was arrested, indeed, outside the province of martial law, which, however, might have been extended. You may get as high legal authorities on one side of the question as on the other, and it is a very nice question to have to deal with. The justice of Gordon's death appears to me, so far as I can read the minds of the Commissioners, to have been by no means out of dispute. *There is much in the report to show that the Commissioners were convinced of the guilt of Gordon.* It is clear that the Commissioners thought it was a case in which no jury would have acquitted ; at all events, I may say, that although there is some question about the illegality of the arrest, and

the insufficiency of the evidence, there is less question about the practical justice of the result."

"The hon. member mistook the despatch in supposing that the excesses which took place were the only grounds upon which Mr. Eyre was recalled. On the contrary, the grounds alleged for it are, first, a ground of policy; viz., for the purpose of allaying animosities and irritation; next, that the Governor had committed an error of judgment in continuing martial law in full force for the whole period allowed by the statute; that he had also been wanting in not giving sufficiently clear instructions to the officers; and lastly, because of his having approved the trial and execution of Mr. Gordon." (Hansard's Debates, vol. 184, p. 1790.)

Mr. Adderley, the Under Secretary of the Colonies, was careful to point out that it was an entire error to suppose that the Governor had been dismissed on account of the excesses, of which it was clear he knew nothing:—

"I did not see, till I came down to the House, the amendment, of which the hon. member for Westminster (Mr. Mill) had given notice. Dissatisfied with the strength of the resolutions on the paper, the hon. gentleman asks the House to declare that nothing short of a trial before a judicial tribunal will be satisfactory to it. I presume that the hon. gentleman, taking that view of the case, *will not mix himself up with the present discussion. It would be a monstrous thing in him to prejudge a case which he himself proposes to refer for decision to a judicial tribunal.* I must, at the same time, confess that of all persons I should most distrust the judicial powers of the hon. gentleman in this case, because he has prominently mixed himself up with the motion of the Jamaica Committee, from which, I am happy to say, the hon. gentleman the member for East Surrey (Mr. Buxton), has thought it right to separate himself. The members of that committee might, indeed, as well have taken the proceedings they have in view eight months ago as now. The hon. member for Birmingham, one of their leading members, did not think it at all necessary to wait for any investigation into the subject. Before any inquiry could take place, he felt himself competent and ready to declare his opinion, in the presence of a large assemblage of his fellow-countrymen, that Mr. Eyre was guilty of murder. It was clear that the hon. gentleman could know nothing of any inquiry, and that as far as he and those who acted with him were concerned, the labours of the Commissioners were the idlest waste of time. They agreed to their verdict before they had heard the evidence, and pronounced the guilt of a man who had not then had any opportunity of answering the accusations brought against him. *They saw but one side of the question; strong prepossessions, invincible prejudices prevented their seeing more than the one side;* but it is remarkable that they

generally range themselves on the side of those who have disturbed the peace and order of a community, rather than on the side of those who have upheld it. And I must say that by their manner of proceeding in this case they have forfeited for ever any title to be heard upon any question whatsoever that demands judicial calmness and judicial firmness of spirit for its consideration. It is not a part of these proceedings, and in keeping with them, that they come here on this occasion. Holding the opinions they do, they should surely have done their utmost to prevent this debate. Surely, if the hon. member for Westminster is right in saying that the action of a court of justice ought to be called into play, *it is monstrous and contrary to every principle of justice that he should come here to prejudge the case and prejudice the decision*, which he considers ought to be left in the hands of a jury, who would have to decide upon a question of life or death; and I think that, besides discouraging this debate, they might even have gone a step farther, and, when they met on Saturday in committee, they might have abstained from one-sided, partial speeches, made to the prejudice of persons whom they were endeavouring to hand over for trial to the judicial power."

The right hon. gentleman protested against the wholesale remission of punishment proposed :—

"As to the last resolution, which is a new one altogether—that we should invite her Majesty to remit all further punishment—that seems to me a very loose sort of proposition indeed. Though an amnesty would be a proper matter for her Majesty to consider, yet I think that this would be the last sort of proposition that any reasonable government would ever dream of entertaining; for it proposes that the injustice which has taken place at one time, should be balanced by another injustice now, and that the most atrocious scoundrels now being punished for the most atrocious and bloody acts ever committed, should have their punishment remitted because others have been put to death. I can hardly see how the Government can for a moment entertain such a proposition as that. I have now discussed to the best of my power these resolutions which have been proposed to the House, and I have given my opinion, as well as I can form a judgment, that it would be unwise for the House to pass any one of them. Some of them are unnecessary, and therefore unwise, while some of them are wholly inadmissible. A resolution embodying any general expression of regret for what has taken place in Jamaica I should be glad to agree to. It would be impossible for me to refuse my vote to such a resolution as that; but that, I suppose, would not meet the object of the hon. gentleman who has brought the matter forward. I have no hesitation, however, in recommending the House to reject the resolutions which are now before it. Some of them undoubtedly express feelings which every member of the

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House entertains, but at the same time we deny the wisdom of them. As a matter of judgment, I should recommend that this House should not pass any of these resolutions. I am not prepared to deny all that they contain, but I am prepared to maintain that it would be unwise for the House to adopt them, and I shall, therefore, move the previous question."

Mr. Mill, the representative of the philosophical Liberals, who had succeeded Mr. Buxton as Chairman of the Jamaica Committee, on the disapproval by the latter of a prosecution of the Governor for murder, came forward as the advocate of criminal proceedings; and not only spoke in favour of such proceedings, but sought to enlist the House in their favour. And certainly, if the spirit of his predecessor showed an incurable one-sidedness of mind as to the facts, the hon. member for Westminster evinced an invincible confusion of mind, which equally showed the fatal influence of prejudice and excited feeling even on the clearest intellect. His statement of the facts was marked by the most delusive generality:—

"His hon. friend had called on the House to consider those circumstances in Jamaica which were so distinctly but so mildly condemned by her Majesty's Commissioners. Those were circumstances to which he desired to call the most serious attention, not with the view of expressing an opinion upon them, but with the view of having them decided by a more authoritative tribunal than this House—the only authority competent to pronounce upon acts of this kind, a judicial tribunal. It appeared from evidence taken before the Commissioners that 439 of her Majesty's subjects, men and women, had been put to death, not in action, not in armed resistance to the Government, but unarmed, after they had fallen into the hands of the authorities, and many of them after they had voluntarily surrendered themselves. It appeared that some of them had been executed without the semblance of a trial, and others after what was called trial by court-martial. And in addition to those put to death, there had been at least 600 men and women flogged, partly without trial and partly by sentence of court-martial; while 1000 houses, together with whatever property they contained, had been destroyed. Now there might be a difference of opinion with respect to the precise amount of culpability involved in these transactions, but that there had been some culpability no one, he believed, would at present pretend to deny. The Commissioners declared that many more persons had been put to death than ought to have been subject to that punishment; that in some cases the charges had not been

proved ; and that in other cases the sentences had not been justified by the facts. The floggings, they stated, had been recklessly inflicted, and had in some instances been positively barbarous. The flogging of women they declared to be in all cases deserving of reprobation ; and in that decision he was sure that every member of the House would agree. There was no occasion to go beyond that dry statement of the facts ; and to such a statement he would confine himself, although he almost felt ashamed to speak calmly of such transactions. But these being the facts of the case, he could see no reason why they should not become the subject of investigation before a criminal court."

Nor could anybody else see any reason why criminal prosecutions should not be instituted against *the actual perpetrators of excesses*. Neither was there any reason, except the invincible perversity of the body represented by the hon. gentleman himself, who would insist upon going against parties who were *innocent* of these excesses. If the hon. gentleman, instead of resting upon their vague and delusive generalities, had gone carefully into the *particular* statements of the Commissioners, he would have found that the excesses, so far as regarded the infliction of death, which, of course, would be infinitely the most important, were for the most part committed by private soldiers without orders, and, indeed, mostly in the absence of their officers, and he must have been well aware that,—as the reader will find, on reference to the report—they mentioned instances of soldiers who had thus slain men without orders, and had in particular drawn attention to one—a black soldier—who had shot *ten* negroes ; and as to whom, they added significantly, that he *could be identified*. Yet the Jamaica Committee did not institute criminal proceedings against this man, nor any other of the actual perpetrators of the excesses ; because they would insist upon going against the Governor or military commander, who had not authorised any of the excesses, and, especially, in the only case for which they could make out against the Governor any appearance of a case of personal responsibility,

in the case of Gordon, in which there had been a trial by court-martial, as there had been trials in 354 cases out of 439—a fact to which the hon. member never adverted. And with the same defect of candour the hon. gentleman represented that the Commissioners had stated :—

“That *many* more persons had been put to death than ought to have been subject to that punishment ; that in some cases the charge had not been proved, and that in other cases the sentence had not been justified by the facts.”

The Commissioners had *not* reported that “*many* more persons had been put to death than ought to have been, with the sanction of the authorities ;” but had stated that private soldiers, mostly without orders, or, perhaps, in some instances, in the first heat of pursuit, with the sanction of their officers, had put men to death in the field : but they also stated that, in the great majority of cases, death was inflicted by sentence of court-martial, and after fair trial. And though it was literally true that they stated that in some instances the charge had not been proved, they only specified *three* cases ; and it was not true that they had stated that, “in some cases the sentences had not been justified by *the facts*,” but that in these cases the sentences did not seem justified by the facts *as they appeared* ; particularly pointing out that it must not be taken for granted that these were the real facts : or even that the evidence was all that appeared on the face of the proceedings. If this was the degree of candour displayed by the hon. member, even in the face of the House, it may be easily conceived what sort of heated, inflamed, and exaggerated statements the body to which he belonged put forth to the public. A single passage might suffice to show the spirit in which he spoke :—

“It might be said that none of the officers who inflicted those punishments thought that the sufferers were innocent men. But that was an

excuse which might be put forward in defence of the greatest atrocities. The perpetrators of the massacre of St. Bartholomew believed that their victims were not innocent people, but were hateful in the eyes of God and man. The authors, too, of the September massacres, and the heads of the revolutionary tribunal in France believed that those whom they put to death were traitors and enemies to their country. That was no doubt the belief of Robespierre and of Fouquier Tinville. He did not mean to compare Governor Eyre to Robespierre and Fouquier Tinville, although there were some of the acts perpetrated in Jamaica which reminded him of their minor crimes."

What a confusion of mind must have been caused, by excited feeling and inflamed prejudice, before an hon. member could compare the perpetrators of wholesale and ruthless massacres, with executions, after fair trials, by British officers!

The Commissioners had reported that in the great majority of the cases the evidence was *quite sufficient to warrant the findings*, and had only mentioned three cases in which it was not so, and three in which the sentences seemed not supported by the findings. Can the hon. gentleman have had this in his mind when he compared these fair and careful trials with ruthless and wholesale massacres? Does he really suppose that the perpetrators of the massacres during the French Revolution sincerely believed their victims *guilty* of anything, except having opinions different from their assassins? Is there the least pretence for supposing that the assassins had any notion of guiltiness of any specific crimes? And did he, indeed, honestly suppose that these horrible atrocities were comparable with the fair trial of men by British officers for complicity in a bloody rebellion? Surely he must have made a strange mistake in his comparison, and he must have meant to compare the negro insurgents with the authors of the massacres in Paris, not the officers who *tried* them. This was the kind of parallel which occurred to the mind of the historian of Europe when he wrote that the "negroes of St. Domingo transcended the atrocities of the Parisian populace." To what a pitch

must prejudice have inflamed the mind of an English gentleman, before he could compare the atrocities of assassins with the severities of those who *tried* them, and confound murderers with the avengers of their victims !

It was worth while to call attention to the above passage, as an illustration of the sort of spirit in which the assailants of those who had exercised martial law looked at the subject. It was a spirit which utterly precluded anything approaching to a fair view of the facts, and it equally obscured and perverted the mental faculties and powers of perception, whilst the plainest distinctions appeared to escape them. Thus, throughout the speech of the hon. member he persisted in confounding legal liability for the honest exercise of martial law with criminal liability for its *abuse*, which no one had ever denied, or doubted. The difficulty in enforcing such liability, if any had been created by the hon. gentleman and his friends, who had persisted in prosecuting parties entirely *innocent* of the only excesses committed, and thus allowed the really guilty persons to escape. No one ever doubted that persons who *abused* martial law were criminally liable ; but under pretence of prosecuting for abuse, the hon. member desired to prosecute those who had honestly used it :—

“The right hon. gentleman opposite (Mr. Adderley) had told them that evening that those persons who recommended that judicial proceedings should be instituted in that case, forgot that the acts in question had been done under the prevalence of martial law. No one, however, was likely to forget that, and they must all be aware that martial law was the negation of all law. But the proclamation of martial law did not exempt from all responsibility the officers by whom it was enforced. As long as martial law was proclaimed the agents of the government did as they liked, but if they liked to do what was wrong, they could be made accountable for their conduct, the moment martial law ceased to be enforced. If it were otherwise, and if a government had only to proclaim martial law, and then under its shelter to pursue with impunity any course they might please, the liberty of England would be held by the frailest of tenures, and the struggles which she had made to secure it must have been made compara-

tively in vain. But that was not so. There was ample authority to show that although martial law, while it existed, was the suspension of all law, those who administered it could afterwards be held responsible, both civilly and criminally, for the use they had made of the powers which it conferred."

Here was the whole question. Men are *not* liable criminally or civilly for *using* martial law, but for *abusing* it. And the hon. member wanted to make mere *error* criminal :—

"Martial law was in its essence simply the law of necessity, and it was only in their necessity that the acts done during its continuance could find a justification. That doctrine had been enforced in a case which had been tried after the Irish rebellion of 1798, before Chief Baron Yelverton and Mr. Justice Chamberlayne. From the report of that case it appeared that a Mr. Wright had been flogged by Mr. Fitzgerald, the High Sheriff of Tipperary ; and although that penalty had been inflicted under the prevalence of martial law, and although an Act of Indemnity had afterwards been passed for the protection of the officers engaged in the suppression of the rebellion, Wright recovered from Fitzgerald by way of compensation the sum of £500. In the year 1866, thirty-four years after the passing of the Reform Act, they had to reaffirm the principle of this judgment ; they had to reassert the responsibility of the agents of the executive for taking lives in the case of a suppression of a rebellion ; they had got to do all this, in order that, in their respect for law and liberty, they might come up to the standard of an Orange parliament and an Orange government in the most tyrannical period of Irish history."

Not at all. There was no necessity to affirm the principle of that case, for no one had ever doubted it. That was *not* a case of martial law at all, it was a case of wanton abuse of martial law, or rather an act of wanton oppression under *colour* of it. It is not every act done *during* martial law which is done under or by virtue of martial law. It must be an act done honestly in the exercise of martial law, in order to be protected by it. In the case cited it was not so, it was a case of wanton abuse. It was not the doctrine of that case that a man honestly *exercising* martial law was to be deemed criminally liable for a mere error of judgment in executing, or allowing to be executed, persons whom a jury might think to have

been unnecessarily executed.. Such a monstrous doctrine as *that* had never been mooted by any English lawyer, that a man was to be made guilty of murder for a mere error in matter of opinion! Still more monstrous was the notion of manslaughter in such cases; that is, in cases of acts like executions deliberately done. The hon. member said, with some scorn,—

“He had been told by a high authority in that House (Mr. Disraeli), that in order to warrant a criminal proceeding for homicide, it was necessary that the act should have been committed with *malice prepense*. But he believed that the Chancellor of the Exchequer (Mr. Disraeli) could not have made such a statement as that, if before he rose to address them, he had consulted the law officers of the Crown. One need not, however, be a lawyer to know that there was such a crime as manslaughter, which differed from murder precisely in this—that it was perpetrated without *malice prepense*.”

No doubt. The hon. member might depend upon it Mr. Disraeli was well aware of that. But did the hon. member ever hear of a *deliberate* act of homicide held *manslaughter*? It is obvious that such an act must be *murder or nothing*, and so the counsel for the prosecution had urged with all their might on the occasion of the prosecution for murder in the case of Gordon. And it was only now, when men's minds revolted at the notion of making the honest exercise of martial law under trial by court-martial, *murder*, that the hon. member, with singular inattention to the first principles of criminal law, desired to suggest that such acts might be manslaughter, a term which only characterises acts of homicide on sudden provocation or in actual struggle. These, however, being the confused notions of the criminal law pervading the hon. member's mind, he proceeded to advocate his view of the criminal responsibility of those who exercised martial law, and it is easy to perceive that it came to this, criminal responsibility for error in judgment, or even on matters of opinion. When an officer sat on a court-martial,

and convicted a man as a rebel, the hon. member would hang him if he happened to differ with him in opinion as to the guilt or innocence of the man convicted. It is important to observe that in the greater part of the speech of Mr. Mill he treated the subject quite in the abstract, as if it was one of general practical application in all parts of the British empire, even the United Kingdom, quite forgetting that the necessity for such an extreme application of the exercise of martial law could not possibly arise anywhere but in Jamaica :—

“If martial law was what they were told it was—arbitrary power and mere rule by force—and exempt from all legal restraint, then indeed the responsibility of those who administered it was aggravated, and not lightened. So long as the taking of human life was restricted by laws, forms, and usages, those laws, forms, and usages were a protection for the judges as well as the judged. When laws were laid down for their observance—when they observed those laws they were generally safe from all other responsibility. But when they were released from all laws, and were left to try their fellow-subjects in any way they liked, when they could take or refuse any evidence, and afterwards pass any sentence and execute it, without any limit but their own judgment (which in nine cases out of ten was the judgment of excited minds)—when there was no protection against military excesses, it became absolutely indispensable that those *who took life should do so at the risk of their own.*”

That, it will be seen, was the conclusion from which the hon. member did not shrink, that officers putting men to death in suppression of a rebellion, should do so *at the risk of their lives*, in case other people should think that in any case they were mistaken. It is not put on honesty, or dishonesty, but on the opinion of a jury, as to necessity or non-necessity. The hon. member seemed to think the only alternative was utter irresponsibility.

“Martial law, while it lasts, is the suspension of all law, and therefore (such is the conclusion) it is the negation of all responsibility.”

But that was *not* the conclusion. The conclusion was, that for acts done honestly in exercise of it while it lasted, there should not be criminal responsibility. Surely, in

logic, this is clear enough. If an ordinary law is suspended by an exceptional law or rule, how can acts done under that exceptional rule be criminal under the law which was suspended?

“The conclusion is, the negation of all responsibility. Not only as soon as martial law is proclaimed, the civil and military authorities, and their agents, may run-a-muck, if such is their pleasure, among all, as far as any legal restraint is concerned, anything they please; but if they please to do what is wrong, they cannot be made to account for it afterwards, except to their official superiors, nor to suffer any but the official penalties which those superiors can inflict.”

The hon. member ought to have remembered that a court-martial can inflict *death*, or degradation from the service; and that its penalties are more prompt, peremptory, and penal, than those of common law. And he ought to have known that no one had ever denied criminal responsibility when there had been bad feeling or utter recklessness: or the responsibility of the persons doing or directing the particular acts, not others who never heard of them, nor dreamt of them. The hon. member, if on this occasion he had not lost his usual clearness of reasoning, would have seen that his view was involved in a logical fallacy. He *admitted that martial law was the suspension of all law*, and yet evaded the inevitable conclusion:—

“I do not deny that there is good authority, legal as well as military, for saying that the proclamation of martial law suspends all law so long as it lasts, but I defy any one to produce any respectable authority for the doctrine that persons are not responsible to the law of their country, both civil and criminal, for acts done under it.”

According to this view the law is suspended and yet in operation; so that, while men act, the law is suspended, and afterwards they are liable to prosecution under that law which was suspended at the time the acts were done. This, in law and logic, is a rank absurdity; and logical consistency, not less than legal principle, along with common sense and common justice, show that if the law is

suspended in order to enable acts to be done, the persons who do those acts cannot be liable under the law which had been suspended, provided they acted honestly. And as the common law allows of no such thing as a suspension of *all* law, in the sense of utter recklessness, it is plain that they can only be liable under the law which is substituted for ordinary law, viz., the law of war, *lex martialis*, which, though not regular, is not arbitrary, and allows of no reckless excesses, and requires obedience to orders and observance of the rules of the same, and an adherence to humanity and the exercise of *some* care, but does not visit as crime the mere lapse into *some* amount of misconduct. The views of Mr. Mill on the abstract question are of great interest and importance with reference to past and subsequent events in this history, because his was the master spirit of the assailants of the authorities, and his spirit pervaded both the discussions and the prosecutions; his spirit prevailed in the *conduct* of the prosecutions and all the proceedings, and his powerful intellect left its influence on the charge of the Lord Chief Justice, whose view of the case was entirely in accordance with Mr. Mill's. It is therefore of great importance to show that his view was based upon entire error, for this goes far to show that Mr. Eyre has been condemned upon erroneous notions of the law. Mr. Mill went on to say :—

“If martial law, indeed, is what it is asserted to be—arbitrary power, the rule of force, subject to no legal limits—then, indeed, the legal responsibility of those who administer it, instead of being lightened, requires to be enormously aggravated.” (Hansard's Debates, vol. 118, p. 1865.)

But surely not so aggravated as to require that men acting honestly, however erroneously, in the exercise of an extraordinary power in a great emergency should be deemed culpable and punishable? No one had maintained that martial law is arbitrary; on the contrary, the author himself had expressly said it was absolute, *but not* arbitrary;

and he had shown how manifest, how marked, how potent and stringent were its limitations. No one had ever maintained that it was subject to no legal limits; on the contrary, it had been thoroughly and carefully explained that it was subject to the strictest legal limits, and to limits far stricter, more stringent, and more severe than those of common law; for that whereas our criminal law requires proof of personal malice, or some bad motive or ill-feeling, or, at all events, *utter* recklessness; under military law, a man might be hanged for shooting or slaying any one without order, and an officer might be cashiered for not executing such a sentence, in a proper case; and a court-martial might inflict a severe sentence even for an error of judgment, which in a common law court would not seem deserving of any penalty. Beyond all doubt, neither military law nor common law would *hang one man for the acts of another*, which was what the promoters of the prosecution were endeavouring to effect, or, at all events, to affirm; for it being shown that soldiers had shot men without orders, in the absence of their officers, they wanted to hang, *not the murderers*, but the innocent and absent officers, or the still more innocent Governor, who was necessarily entirely ignorant of these atrocities. And then these gentlemen, who themselves, by their persistent pursuit of the *wrong party*, had thus caused the escape of the persons really guilty, wanted to make out that martial law was said to be arbitrary, because without any restraint whatever; and that the absence of actual criminal responsibility, was a failure of justice, when, in truth, it was a miscarriage, for which they alone were responsible.

The hon. member went on dealing with the abstract question, as if martial law were of general practical application, to enforce the liability of those who executed it, upon general principles. The main interest of all this is in its having been implicitly adopted and followed by the Lord Chief Justice, who, in his charge, sug-

gested that martial law meant regular military law, and insisted on the strict observance of forms. Mr. Mill said :—

“So long as the power of inflicting death is restricted by laws, by rules, by forms devised for the security of innocence, by settled usage, by a long series of precedents, these laws, these usages and precedents, are a protection to those who are judged ; but they are also eminently a protection to those who judge. If a law is prescribed for their observance, and they observe the law, they are in general safe from further responsibility. The less we leave to their discretion, the less necessity is there, in the interests of the general safety, for making them personally responsible. But if men are let loose from all law, from all precedents, from all forms, are left to try people for their lives in any way they please, take evidence as they please, refuse evidence as they please, give facilities to the defence, or withhold those facilities, as they please ; and after that, pass any sentence they please, and execute those sentences with no bounds to their discretion but their own judgment of what is necessary for the suppression of a rebellion, then it is indeed indispensable that he who takes the lives of others under this discretion should know that he risks his own.” (Ibid., 1803.)

No one could suppose, from these words, that the hon. member had just read the following passage, already quoted in this work, which appears upon the same page, in juxtaposition with that just quoted. The passage now cited is quoted from a judgment in a *case of martial law*.

“It is expected that in all cases there should be a grave and serious examination into the conduct of the supposed criminal, and every act should show a mind intent to discover guilt, not inflict torture. By examination or trial is *not meant that sort of examination in which a jury are engaged*, but such examination and trial, the best the nature of the case and the existing circumstances would allow of.” (Wright v. Fitzgerald.)

That is exactly what was laid down in both cases as already quoted in the former part of this work, where it was distinctly said that if there had been a mutiny, and an *honest inquiry*, however ‘rough and ready,’ even a drum-head court-martial, it would have sufficed to take away criminal liability. Was it fair, on the face of these authorities, either to represent that martial law was without any restraint, or, on the other hand, to urge that it was

by law liable to criminal responsibility for mere non-observance of forms or precedents! All this was implicitly adopted and followed by the Lord Chief Justice, although, as has been seen, entirely opposed to the authorities. And thus again it is seen that the Governor was condemned on a wrong view of the law.

That this view was entirely opposed to sound sense and right reason, as it undoubtedly is to law, might well have been known to a highly-cultivated and well-informed layman like Mr. Mill. There are two great works with which Mr. Mill may be supposed to be familiar, in both of which the view here contended for, that it is the substance of justice alone which is essential, is upheld; one is Bentham's *Rationale of Jurisprudence*, in which there is a passage lauding courts-martial as courts of natural procedure, because they are *not* bound by formal rules; for Mr. Mill ought to be aware that it was solemnly decided a hundred years ago that even regular courts-martial are not bound by all our rules,* though as his view received the countenance of a Lord Chief Justice, he cannot be much blamed. Certainly a Lord Chief Justice ought to have known that this had been decided in his own lifetime, and *in his own court*;† so Mr. Bentham wrote, of courts of natural procedure—

“1. Courts-martial, including the naval as well as the land branch of the service, the mode of procedure not presenting in this point of view any material difference. *General* and *regimental* again is a distinction respecting the constitution of the court, and the sort of causes before it, rather than respecting the course of procedure. . . . In the above instances, but *especially the first*, the natural modes of procedure may be considered to be preserved rather than restored.”

* *Grant v. Gould*. 2 Henry Blackstone's Reports—a case cited by the Lord Chief Justice on another point, but not noticed upon this.

† *Rex v. Suddis*. 1 East's Reports. That was a case in the King's Bench, and the Lord Chief Justice (Kenyon) repudiated the notion that the judges were “to pick holes or to hunt after objections,” even in the proceedings of *regular* courts-martial abroad! What a contrast to the course of the *present* Lord Chief Justice!

That is, a procedure in which what is substantial rather than formal is considered, and the reason is given—

“Why? Because in these circumstances a strict regard to *the ends* of justice is so indispensable, that under the technical system the country could at no time have been preserved from utter ruin for six weeks.” (Bentham’s *Rationale of Judicial Evidence*, vol. iv., p. 431.) “In whatever other respects the course of procedure observed differs in these courts, it agrees in being unshackled by those rules with which it is fettered in the technical courts.” (Ibid., p. 432.) “In none of these is there anything to prevent them from directing their operations to the *ends of justice*.” (Ibid.)

This is sound, sensible language, in accordance with judicial decisions, which establish that courts-martial, even *regular*, are not bound by forms and precedents, and settled rules, as courts of law are, and that at all events courts-martial under martial law are not, but are only bound to observe the essentials of justice, which are a fair hearing of the evidence, the best that can be got under the circumstances, and an honest decision upon it.

But there is another work, for which, perhaps, Mr. Mill would have a still greater regard: “*Mill’s History of British India*,” in which that great writer makes remarks of a similar tenor:—

“Another important condition to the excellence of a judicial establishment is, that in its mode of conducting the judicial business, all forms which create delay, &c., or any one of them without any corresponding advantage, should be carefully and completely retrenched, and nothing left but those *plain and rational operations which are recognised by all the world as useful, and alone useful, in the investigation of a matter of fact*. It will remove the necessity of a longer explanation to observe that the mode of procedure which is called *summary* (and is followed in small debts’ courts in England), is an example of the mode of procedure which is divested of ceremonies, and retains only such *plain and simple operations as form ordinary steps of a rational inquiry*, and that the mode of procedure, on the other hand, which is called *regular*, and followed in the superior courts, is an example of the mode of procedure which is loaded with forms,” &c. (Mill’s *History of British India*, vol. v., p. 606.)

What would be substantial, would be the constitution of the courts, and the observance of the rules of natural

justice. Mr. Mill, however, was evidently not aware that the courts-martial in Jamaica were constituted according to regular military law, *i.e.*, to the provisions of the Mutiny Act, and the Articles of War, *as regards the Colonies*; and the blunder is the more remarkable because it was followed not only by the counsel for the prosecution—in the prosecution which ensued—but even by the Lord Chief Justice. For Mr. Mill quoted the opinion of an anonymous military officer, who told him :—

“I had fully made-up my mind how I should act if ever called upon to enforce martial law. I had resolved as the only safe and prudent plan to consider martial law as simply military law, extended to civilians, feeling convinced that a fixed or written code was essential, and that what was sufficient to curb soldiers, was surely sufficient to restrain civilians in revolt.”

By quoting this Mr. Mill adopted it, and he was little aware that it involved substantially an admission of the legality and propriety of all that was done in Jamaica : at all events, on sentence of court-martial ; for it was all in accordance, as far as possible, with the rules or analogies of regular military law. No doubt it is as well to adhere to it as closely as possible—as *the military commanders did in Jamaica*,—though Mr. Mill fell into an error to suppose it was obligatory to do so, and that in war, or in rebellion, which is war, regular military law alone is allowable, even as to soldiers ; or that regular military law in distant colonies is the same thing as it is at home. There was a double error here, and it pervaded his speech, as it pervaded all the proceedings, for he plainly supposes that the regular military law contains all that is sufficient or allowable to curb *soldiers* in revolt, whereas it is well known that the Mutiny Act and Articles of War *do not restrain the powers of the Crown and its military commanders in war* ; Mr. Mill may be excused for not knowing this, but it would be inexcusable ignorance in a military officer not to be aware of it ; and it was distinctly laid down,

even by the Lord Chief Justice in his charge, although he failed to apply the principle to rebellion, which is war. But, further, the adoption of this proposition by Mr. Mill is a distinct admission that *all that is required to curb soldiers in war is allowable to restrain civilians in revolt*, who, indeed, are, if in armed rebellion, not civilians, but soldiers. There can be no reason on earth, (as the Lord Chief Justice, under the influence of the same error, afterwards said,) why martial law should not, as to rebels, mean what it does as to soldiers, viz., *military law*. This was Mr. Mill's view; for Mr. Mill's "military officer," whom he quoted, adds—laying down a rule or principle of the extent of which he was not aware—while coupling it with an arbitrary limitation of his own without authority:—

"Taken fighting with arms in their hands should alone justify the summary execution of rebels; whilst the composition and powers of the courts-martial on rebels should follow the Articles of War, which are amply sufficient to cover all cases which could ever arise under martial law."

No one would ever think it necessary to carry the powers or penalties of martial law beyond the Articles of War, *which make sedition capital*; or even sending intelligence to an enemy. And according to this view the trial and execution of Gordon was perfectly regular and proper. The powers of the court as to rebels are also those of military law. No authority nor reason is given for the limitation of the principle, and for restricting it to men taken in arms. Regular military law is not so limited. But it is evidently implied that the courts-martial, under martial law, are to be constituted, in capital cases, as under the Articles of War and the Mutiny Act; and the implication is that those in Jamaica were not so. Mr. Mill, as a civilian and a layman, may be excused for not knowing better, but either a soldier or a lawyer ought to know that the Mutiny Act and Articles of War, (which in terms only apply to *the soldiers of the Crown*,) make special pro-

vision for the constitution of courts-martial in distant colonies like Jamaica, and that those provisions were followed carefully in the constitution of the courts-martial in Jamaica. For by special provision, for the colonies, courts-martial, even in capital cases, may be constituted of three officers, of *either* service; so that the courts-martial in Jamaica were constituted strictly according to regular military law.

It will have been manifest that Mr. Mill, the principal promoter of the prosecutions of the Governor and officers, had failed in so far making himself master of the subject, as to avoid falling into most important errors, which pervaded his whole view of the subject. He said:—

“We are now informed that neither the Articles of War nor the Mutiny Act are in force at all during the proclamation of martial law, and that the courts-martial are not bound by their provisions; but the oath which is administered to the members of every court-martial, and which was taken by all the members of the courts-martial, *begins with these words*:—‘You shall duly administer justice according to the rules and articles for the better government of her Majesty’s forces, and according to an Act now in force for the punishment of mutiny and desertion.’ *This is what they swore to do*; nobody pretends that they did it, and they are now justified by saying that they were not bound by their oath!”

The hon. member, wherever he got the oath, could hardly have failed to know that this is only the *beginning* of it; indeed, he says, it *begins* with these words, so that he must have known that there were *other words*. And could he have been ignorant what these words were?

“And in cases not within the same, *according to my conscience and the custom of war in like cases.*”

Ought the hon. member to have made such an imputation upon the officers as disregard of their oaths—either suppressing these words if he knew of them, or not ascertaining them if he did not? The oath is, in these terms, distinctly quoted by more than one of the officers in their examination, in the Blue Book, which the hon. member

was bound to have read. And whether he had read it or not, this is a specimen of the sort of spirit in which the unfortunate gentlemen were assailed, both in and out of Parliament.

After this, Mr. Mill said, in conclusion :—

“He had stated to the House the principle on which he and those who thought with him acted. They wanted to know who were to be their masters—the Queen’s judges and a jury of their country, administering the laws of England, or three military and naval officers, administering, as they were told by the right hon. gentleman, no law at all ; and, as far as it was humanly possible, they meant to know it. It remained to be seen whether the people of England would support them in the attempt they would make to re-assert the great principle of the responsibility of the executive or the agents of the executive to the laws, civil and criminal, for taking human lives without justification. That duty could be performed without the help of the Government, but not without the aid of the people of England.”

But, as it turned out, the hon. member and his associates did *not* have the aid of the people of England, because they saw that the real object was *not what was avowed*, and was pursued by means which were unfair and unjust. Indeed, as already observed, the objects avowed were different, if not *inconsistent* ; at one time it was professed that the object was to establish the illegality of martial law, and at another time its *abuse*. If the *former* were the real object, then the prosecutions would have been conducted in the fairest possible spirit, and on the broadest possible basis of facts ; whereas, as has been seen, they were conducted in quite the *opposite* spirit, and upon the *narrowest* possible basis of facts, and *excluding* as much of the truth as could be kept out by the most unfair methods of management. If, again, the object was the punishment of abuse, the prosecutions would have been instituted against the *actual perpetrators* of abuses ; whereas, on the contrary, the worst of them were left unnoticed, and the prosecutions were directed against men who had not authorized a single act of excess, and had, on the contrary, issued positive orders to restrain the punishments inflicted, and

to confine them to the worst offences and the clearest cases.

No wonder that prosecutions so conducted failed, although aided in the most unfair way by all these inflammatory discussions in Parliament. No wonder that in such attempts, not to promote, but to defeat and pervert justice, the hon. member and his associates had *not* the aid of the people of England !

It will be abundantly obvious from this debate that the Governor and the authorities had been condemned upon notions of the law entirely erroneous, and which necessarily perverted the view taken of the merits ; for what is illegal is *primâ facie* culpable, but what is legal is *primâ facie* proper. Moreover, it is manifest the view taken of the case was altogether dictated by prejudice. All through the debate then it will be seen that those who shared the views of the assailants of Mr. Eyre, shared in the fundamental fallacy which pervaded those views, viz., that there is no difference in degree of danger between a terrible and formidable rebellion like that of a race enormously preponderating in numbers, and influenced with hostile feelings and a thirst for blood, and the most ordinary riot or insurrection, without any element of danger. This was especially apparent in the speech of Mr. T. Hughes, for instance, one who, from his character as a writer, might have been expected to show more candour :—

“He wished, however, to impress upon the House that if they now allowed the deeds which had been done in Jamaica to pass without being dealt with by any judicial tribunal, they would be the first generation of Englishmen who had shirked the duty of seeing that the honour of England did not come to disgrace in the hands of persons who represented us in the colonies, and who bore our honour and our authority on their shoulders. He would not go far back, but he would give two or three instances of what had been done in this country with regard to colonial governors within the last hundred years. The first case to which he would refer was that of Governor Sabine, the Governor of Gibraltar, just one hundred years ago. A military train started from Gibraltar, and connected with the

artillery train was a carpenter, who was tried by court-martial and flogged. The sentence passed upon the man was simply affirmed by Governor Sabine, and for that he was tried in this country, and found guilty of trespass."

Here it is implied that the measures taken in time of rebellion are no more justifiable than an illegal act in time of peace!

"The next case was that of Governor Mostyn, of Minorca, in 1773. At that time the island was in at least as troubled a state as Jamaica in 1865, and there was a certain wine-grower, named Fabricas, who was very troublesome to the Government, who was in the habit of getting up petitions in favour of free trade in wine, and at last he threatened to come with 200 wine-growers behind him. The Governor called a council of field-officers in the island, and consulted three of the judges, and with the consent of those parties he seized upon Mr. Fabricas, imprisoned him for a week, and then sent him away to Carthage, his own country, for a year's banishment. Mr. Fabricas prosecuted the Governor in this country for that conduct. It was an action brought before a civil judicial tribunal, because the offence charged was not of a nature to be heard before a criminal tribunal. The defence was that the island was almost in a state of insurrection, and that in three cases former governors had done exactly the same thing. The Lord Chief Justice De Grey, who tried the action, laid it down that the defendant had acted with caution, judgment, and prudence, he might almost say with impartiality, but yet a verdict was found for the plaintiff, with £3,000 damages. A new trial was moved for, and refused, and upon a writ of error being brought, it was contended for the Governor that he was only accountable to the King in Council. Lord Mansfield, before whom the case then went, laid it down that in an English court of justice such monstrous propositions as that a governor acting by virtue of letters patent under the great seal could do what he pleased, and was accountable to God and his own conscience, formed a doctrine which was not to be maintained, for if he was not accountable in that court, he was not accountable anywhere. The King in Council had no jurisdiction in the matter, not being able to give damages, reparation, or punishment. The judgment was therefore affirmed."

Here it is actually represented that a trivial riot of Europeans is comparable to a terrible and formidable rebellion of negroes, intent on universal massacre :—

"The last case was that of General Picton, who became Governor of Trinidad after it was taken by Sir Ralph Abercrombie, and who had received written instructions from Sir Ralph that no sentence was to be executed in criminal matters without his (General Picton's) approbation.

Everything in the island at the time was disturbed, and no man's property was safe. A robbery was committed in the colony at the house of a merchant, and the alcade, or judge, finding that a mulatto girl was suspected of the crime, applied to General Picton, the Governor, for permission to put her to the torture, with a view to extract from her a confession of her guilt. General Picton acceded to that request; the girl was accordingly put to the torture, but the General, in the course of a trial which was afterwards instituted, was found guilty of having violated the law. A motion was then made for a new trial, and the charge continued to hang over General Picton throughout the whole of the time he had so gloriously led the fighting brigades in the Peninsular war."

Was not the hon. member aware that upon the argument of a special verdict the court were so clear that the Governor was justified by the Colonial law—that being the Spanish law—that no judgment was prayed; and in reality the verdict was set at nought? The candour as regards the memory of the gallant Picton was of the like measure with his candour towards the unfortunate Governor of Jamaica. After spending a year in exciting the country against him, he professed to be surprised that the unhappy gentleman should not be anxious for a trial on a criminal charge :—

"The men of that day felt that such a course as that pursued by Picton ought not to be allowed to remain unpunished; and he (Mr. Hughes) contended that at the present moment the conduct of Governor Eyre ought not to be condoned without the intervention of a trial before a legal tribunal. He had no hesitation in declaring that if he found himself in the position at present occupied by Governor Eyre, he would ask for such a trial as the only mode of duly consulting the honour and interest of England, which had been committed to his charge; and he earnestly hoped that that was the mode in which that question would yet be determined."

So that the notion of a popular member now-a-days is that after a Governor has saved a colony from massacre, and is then reviled by shameless calumniators as a murderer, he ought really to be extremely desirous of being tried as a murderer, in order to have an opportunity of showing that he is not one! Such are popular ideas of the treatment due to servants of the Crown who have acted in a

great emergency for the best! The point to be observed, however, is that the hon. member, like all the others, *ignored the emergency.*

It was manifest from the concluding observations of the hon. member; that he was deeply imbued with the prejudices of the abolitionist party, which not only prevent them from looking at a negro rebellion as it really is, but make them ready to denounce and ascribe to prejudice all measures taken against it:—

“He believed Governor Eyre to be a humane and conscientious man, and his own opinion was that these things could never have happened if the population had been white instead of black. The real reason, perhaps, was, that Governor Eyre and his officers were not—perhaps none of us were—free from the feeling of contempt for an inferior race; but this circumstance rendered it all the more necessary that they, sitting in judgment calmly, should say that there ought not to be one code of morality for blacks, and another for whites. They must look for a severe condemnation by naval and military authorities of having a separate way of treating inferior races; though, perhaps, they could hardly look for such condemnation unless the authorities were impelled to it by the expression of opinion in the House and in the country. He knew that it might be said that they could not afford to treat inferior races with justice; but there was no greater mistake than this, for justice was as much the due of one race as of the other.”

As if any one had ever doubted this! The reason why it had been deemed necessary to exercise in Jamaica severities which could never be dreamt of in the worst rebellion conceivable among those of English blood, is that, on the one hand, the enormous and overwhelming preponderance of the *race* to which the insurgents belonged, rendered it a rebellion infinitely more formidable than any which could occur in any other colony; and, on the other hand, because the atrocities by which negro or other semi-savage rebellions are marked, are such as never would be dreamt of by British rebels. It is not to be wondered at that after the tone of the hon. member's conclusion, an hon. member, Mr. Cochrane, should have replied with some indignation:—

“He was surprised that during this debate he had *heard no sympathy expressed on the opposite benches for the whites who were the first victims of this rebellion.* And he must also say that it was with regret that he heard that the subject was to be discussed at all, because it could hardly be discussed without producing bitterness of feeling; and in the course of the discussion it was almost sure to be implied that gentlemen on his side of the House had sympathy with acts which they regarded with much the same light as the hon. member who brought forward the question. The hon. member for Westminster had compared what had happened with the massacres of St. Bartholomew and of the French Revolution; but that was an exaggerated way of speaking that was scarcely worthy of a man of his philosophical temper. It should also be borne in mind that there were 500,000 of blacks in Jamaica and only 15,000 whites, and what would have been the position of Governor Eyre if he had not used the most energetic measures, and if there had been a general massacre of the whites? It should not be overlooked that *public opinion had been, he might almost say, manufactured upon this subject.* It might have been supposed that there would have been the greatest sympathy for Governor Eyre and his officers; but instead of this, meetings were held in the opposite interest. One was at Exeter Hall; and at the door copies of Gordon’s letter to his wife was printed on black-edged paper, and was distributed at the door; and at a meeting at Brighton a gentleman who said a word in favour of Governor Eyre was turned out. That gentleman justified a statement of his right hon. friend (Mr. Adderley), that the Commissioners considered Gordon implicated in the proceedings, and he also quoted a letter from a minister of the Scotch Church at Kingston to show that there was an intention to murder all the whites and the respectable coloured people on Christmas-day. He believed that the energy and determination of Governor Eyre had insured the safety of the white population; and the most curious thing was that a paper in the island which had always opposed the Governor, accused him not of showing too much, but too little, energy in suppressing the rebellion. It was important to consider what was the cause of all this. Now, Jamaica ought to be one of the most prosperous of all our colonies. It appeared from the most authentic documents that Jamaica was far more lightly taxed than Barbadoes, Trinidad, or our other West India colonies. Before the abolition of the slave trade Jamaica produced about four times more sugar than any of the other colonies, and since the passing of that measure, whilst the other colonies had progressed fifty, sixty, or one hundred per cent., Jamaica had fallen off about sixty-two per cent. The reason for the retrograde position of Jamaica might be found in the following facts:—In Barbadoes the proportion of the blacks to the whites was nine to one, in Guiana eleven to one, in Trinidad eleven to one, but in Jamaica it was thirty to one. That fact might explain the difficulties in which that island was placed. It would also go far to explain the position in which Governor Eyre was placed. When some hon. gentlemen drew comparisons between the position of Governor Eyre and that of the

governors of some of our other colonies, they ought to recollect that the former had a mere handful of troops to meet the rebellion of the blacks. What was the feeling of those most interested in the matter? Why, the white inhabitants poured into the Governor addresses upon addresses, expressing their utmost sympathy with him, and their approval of his conduct throughout those sad and disastrous events. Amongst those who signed such addresses were the Bishop and the Archdeacon, and the whole of the clergy of the island. He contended that it was the duty of every government to support their officers who were placed in such a high and responsible position as that of Governor Eyre under such trying circumstances as had occurred in Jamaica. He (Mr. B. Cochrane) regretted that the late Secretary for the Colonies had resorted to the measure of suspending Governor Eyre before the inquiry. He considered that step of the right hon. gentleman opposite to be one of an almost ungenerous character. He denied that it was incompatible with the proper conduct of that inquiry to continue Governor Eyre in his position. When the right hon. gentleman opposite (Mr. Gladstone) went to Corfu upon a special commission, it was not deemed necessary to remove Sir John Young from his position of Governor. Governor Eyre had, however, suffered the punishment of deposition before the inquiry in Jamaica, and was treated in the most ignominious manner. He thought that the hon. gentleman would have pursued a much wiser course if he had not brought this question forward, as he could not see how any practical result could arise from his motion. Knowing what a humane and honourable man Governor Eyre was, he (Mr. Cochrane) had the satisfaction of availing himself of this opportunity before the close of the session of expressing the feeling with which he was impressed, that the late Governor of Jamaica had acted in a most admirable manner in the difficult and dangerous position in which he was placed."

It is consolatory, and to the credit of the whole of the country, to read, amidst a mass of senseless calumny and monstrous misrepresentation, a speech marked equally by sense, and spirit, and sound judgment.

The Attorney-General, (Sir J. Rolt,) put the question upon its right footing, and expressed the general feeling of the House when he declared his concurrence in a resolution, merely in general terms, deploring excesses (which Mr. Eyre had himself deplored), but declined to assent to any resolution implying blame to the Governor, or any particular parties. He said:—

"With regard to the first resolution, viz., 'That this House deplores the excessive punishments which followed the suppression of the disturbances

of October last, in the parish of St. Thomas, Jamaica, and especially the unnecessary frequency with which the punishment of death was inflicted.' " I do not think there is a man in this House who would not affirm it if it stood alone. It appears to me to steer clear of every objection which might be made to the other resolutions, *because it uses the word 'punishment'* throughout, and treats of the acts that were at the time committed as legal. There cannot be a doubt that we all deplore in our hearts, and in a manner which I fear no words of ours can express, that such things should have taken place, and that there should have been these excessive punishments, and whilst deploring what I considered to be an *error in judgment* of the greatest and most serious kind, but at the same time giving full credit for rectitude of purpose to those who directed the punishments, if this resolution stood alone, I for one should be glad to affirm it, and I therefore hope we shall yet be able to take a vote on it apart from the others."

That is to say, the Attorney-General was willing in general terms to declare that he deplored that there should have been excessive punishments, or too frequent inflictions of the punishment of death, leaving it quite open, as the Commissioners had left it, who was to blame for them. And he evidently regarded it, even in those who *were* responsible for it, as a mere error of judgment, speaking, no doubt, in accordance with the Report of the Commissioners, of the "great majority" of the cases of execution, as cases in which the men were not *unjustly*, though perhaps unnecessarily executed. But he went on to decline to support any resolution affirming the responsibility of the Governor, and approving of his recall :—

"But I will turn to the second resolution, which is this :—'That this House, while *approving the course taken by her Majesty's Government in dismissing Mr. Eyre from the governorship of the island*, at the same time concurs in the views expressed by the late Secretary of the Colonies, that, "while any very minute endeavours to punish acts which may now be the subject of regret, would not be expedient, still that great offences ought to be punished, and that grave excesses of severity on the part of any civil, military, or naval officers ought not to be passed over with impunity.'" Now the accurate meaning of this resolution would seem to be that the late Secretary of the Colonies had said 'that great offences ought to be punished, and that grave excesses of severity on the part of any civil, military, or naval officers ought not to be passed over with impunity.' I will ask the

House whether these words agree with the instructions issued by the late Secretary of the Colonies to the Governor of Jamaica? If they do agree with such instructions, I then want to know what is the meaning of passing a resolution containing the same words? The Governor was bound to follow those instructions, and they are such as may necessitate the prosecution of some of the persons engaged in those transactions. It appears, then, to me that it would be superfluous for the House to affirm any of those instructions by embodying them in a resolution of this House. If, however, the resolution implied that something more is intended, then I think that we ought not to assent to it, as it would in effect amount to a prejudging the question as to the alleged commission of grave excesses of severity on the part of the authorities in the island, and as to whether they ought to be punished. With regard to the other two resolutions, I understand the third not to be supported by any hon. member, and with reference to the proposed compensation to be awarded to the persons who are now suffering punishment, it may be that they are suffering that punishment according to their deserts, but it is proposed to remit that punishment because others have been punished who did not deserve it. That is a system of compensation this House ought not to adopt, and I cannot think that the hon. gentleman the member for Surrey intends to ask the House to affirm that resolution."

So the Attorney-General, and the House agreed with him, wisely declined to agree to any resolution affixing blame to any one, or to any other than a general expression of regret.

In the result, although the House entirely agreed in a general resolution deploring excesses but blaming no one, they declined to give any sanction to criminal prosecutions, as no such sanction was required as regarded those who were the actual perpetrators of atrocities, and as regarded those who had not approved of or directed them, the House would lend no sanction to their prosecution. Mr. Cardwell said :—

"The question has been raised whether he ought to be brought before a jury of his countrymen. The late Government were not of opinion that he ought to be put upon his trial. We were of opinion that it was not a case for criminal prosecution, but was properly dealt with by removal of the Governor from his office."

And Mr. Forster, who had been Under Secretary of State, said :—

“He could not concur in proceedings against him for two reasons—first, because, after all, it was a mistake. The Governor thought he was acting for the best. But, further, there were peculiar circumstances connected with Mr. Eyre’s position which ought to plead very strongly against further proceedings. He believed that Mr. Eyre acted for the best, in his discretion. When we have placed a man in a very responsible position, though, in fulfilling its duties, he may make a most deplorable mistake, yet, having acted for the best, it was difficult to institute proceedings against him. His position was such that he was almost forced to declare martial law, and obliged to use his discretion.”

Thus, therefore, the Government which recalled Mr. Eyre, were *against* legal proceedings, declined to institute them, and declared against them. Their successors, as has been seen, took the same view and adopted the same course. Parliament under both Governments tacitly approved this course, and not even a motion was made in favour of prosecution, although it is obvious that if there were any case for prosecution, it was for the Government to undertake the prosecution of a high officer of the Crown for any high crimes and misdemeanours in his office, and there would be an absurdity and indecency in any private parties being allowed to use the name of the Crown for the purpose of prosecuting one of its officers against its will. Therefore it was that the Indemnity Act was assented to by the Crown, and it is evident was *intended* by the Crown to *prevent* criminal prosecutions, except in the cases to which an Indemnity would *not* apply, and which it was evident the Government considered would *not* include that of the Governor, viz., cases of acts done otherwise than in an honest belief of their necessity.

The view of the Attorney-General and the majority of the House evidently was that as regarded the Governor there had at the worst been only a mere error of judgment and no grave culpability. And this appeared to have been the view of the law officers of the Crown, for in the despatch in which Mr. Cardwell announced the final opinion of the Government as to the Bill of Indemnity, upon their advice

he stated that those who had given orders would not be protected unless the orders were honestly given; and no allusion is made to liability of any others than the actual perpetrator, for things done *without* orders. But to render the *Governor* liable, who not only did not give bad orders, but *could* not give *any* particular orders, good or bad, was a strange piece of injustice. Surely those who give orders are liable for them, not those who give none; those who commit or direct crimes, not those who do *not*.

This appeared to have occurred to one of the ablest and most independent men in Parliament, Mr. Ayrton, who took the view that the officers (if any) who had directed or allowed excesses should be tried by court-martial. He derided the idea of any want of responsibility, and showed by a case he cited from actual experience how prompt and severe is military punishment of excesses :—

“I regret that it should be supposed there would be any difficulty in bringing to justice persons who have unnecessarily put British subjects to death. We have a precedent in what happened thirty years ago in India. There was an insurrection which had to be grappled with by military force, and a civil officer sent a young military officer with ambiguous instructions not to embarrass himself with prisoners, and to put down the insurgents. The insurgents dispersed, some of them surrendered, and he hanged a great many of them. He was tried by court-martial for *inter leges silens armii*, and he was *dismissed the army*. *If officers of the army, in carrying on military operations, put people to death unnecessarily, it is the bounden duty of the Government to have them brought to trial, like that officer, by court-martial.*”

The logic of this, of course, was that it was the officers who ordered or sanctioned excesses, or the men who committed them without orders, who were liable for them, and that they were liable to instant trial by court-martial, and even, if proper, to military execution.

It is true, the hon. member went on to say, that he thought the Governor liable for having allowed the execution of prisoners at all :—

“If the officers of the army or navy had unnecessarily put persons to

death it was the duty of the Government to have them tried by court-martial. In the proclamation issued in Jamaica it was declared that the troops and authorities should exercise all the rights of belligerents against persons in insurrection. One of these rights was to put down insurrection by military force, but he had yet to learn that it was a belligerent right to put to death prisoners who had been taken in military operations. Nothing of that kind had been done in the late war in the United States—he hoped it would not be allowed to be done in one of our colonies; and if done, that the House of Commons would do nothing more than deplore the event (hear, hear). The civil officer who advised these things ought to be made responsible to the House of Commons, for there was no other tribunal, if a state of war superseded the ordinary tribunals; and if these resolutions were passed it could only be as a step to a more solemn proceeding. It was a question of murder, it was a question of misconduct in the discharge of a great public duty, and he thought that they should leave it to the hon. member for Westminster to carry out next session that which he proposed.”

But this was a manifest mistake; for *rebels* have not the rights of belligerents any more than soldiers, either of the army or the enemy, who, as deserters or stragglers, commit mere murders or plunder, and are liable to be executed summarily either as murderers or marauders. The proclamation of martial law gives the soldier of the Crown the rights of war, but not the rebels, for it is a war against *rebels*. The contrary view would entitle the rebels to be treated as prisoners of war, which, of course, would be absurd, and place them in a better position than if arrested by the civil force, when they would be liable to death as traitors. The view of the hon. member, moreover, was entirely inconsistent with the whole tenor of the Report of the Commissioners, and of the resolution itself which the House was about to affirm. This was pointed out by Mr. Disraeli, who, as Chancellor of the Exchequer, was then leader of the House. He said :—

“If Governor Eyre is to be brought to justice by Parliament it can only be by the process of impeachment, and it is for the honourable gentleman and others to consider whether they have ground for such a grave act. But what he wanted to call the attention of the House to is that this resolution, if passed, can never be the foundation of an impeachment, because it is

based upon the assumption that everything that was done was legal. The expression is that 'we deplore the excessive punishments that followed the suppression of the disturbances,' which implies, of course, that the acts were legal, because a punishment is an acknowledgment that it is the result of a legal act; and therefore it would be impossible to take this resolution as the groundwork of an impeachment of Governor Eyre; for the hon. member in putting this resolution only expresses what the words express, and does not express the interpretation which has been put upon it by the hon. member for Surrey. And I must protest against that interpretation. What this resolution does is to deplore what took place in Jamaica, and I should suppose that there is no one in this House who does not deplore it; whatever may be the result we all must look on it as a great shame and calamity to this country. But at the same time it assumes throughout that what was done was done legally, and while it regrets everything that occurred it does not leave in doubt its opinion that the action of the authorities was perfectly legal. *Nor is there any allusion in this resolution to any individuals.* The hon. gentleman says that this is an allusion to the conduct of individuals who ought to be proceeded against; but on the contrary, *throughout this resolution expressions of that kind are entirely avoided.* We deplore the punishments for the suppression of the disturbances and the frequency with which the punishment of death was inflicted; but the very phrase 'punishment of death' refers to a legal act, and therefore in passing this resolution there is no ground whatever for the assumption that we are necessarily called upon to act against individuals. In fact, the act of passing this resolution would be quite contrary to the course which the hon. gentleman seems to imply would be the legal consequence. I think that this resolution is one that it would be very proper to pass. I think it is one in which we may all join, and I trust therefore that the House will adopt it."

That is to say, a resolution which, like the Report of the Commissioners, deplored that excessive punishments had been inflicted, but reflected no blame upon any one in particular, least of all upon the Governor, who not only had not issued a single order or suggestion that could lead to excess, but, on the contrary, had made a distinct suggestion calculated to prevent any excess. This the House of Commons distinctly declined to do, or to give any sanction to the criminal prosecution of any but the actual perpetrators of excesses.

Two things were made abundantly manifest by this debate: In the first place, that the condemnation and

recall of the Governor had been obtained by and was upheld only upon a representation of the case entirely different from the real facts ; and, in the next place, that the House was, as a body, opposed to any prosecution of the Governor.

The first part of this statement is sufficiently sustained by a simple reference to the speeches of Mr. Buxton, the mover of the resolution, and the late Under Secretary of State, Mr. Forster. It will be seen that the representations upon which they supported the recall were not only entirely different from the statements in the Report of the Royal Commissioners, but were in all essential respects the opposite of them. Nothing could be more unlike the statement of the case in the Report than the representation of it conveyed in the speeches of these gentlemen. The two representations of the case had not the least resemblance ; they were utterly opposed to each other. The one presented a terrible and formidable danger ; the other represented no danger at all. And it was not only implied, but plainly expressed, in the speech of the mover, Mr. Buxton, that, if indeed the danger had been really so great as represented, then there were no great excesses, at all events in what had been authorised. He and his associates therefore only made out a case for the recall, by representing the danger as slight, by keeping out of sight all the elements of danger, the crimes that had been committed, and the number of insurgents at large, and the rapidity with which the insurrection spread, and the imminent peril of its renewal, and the tremendous disparity of numbers, and the overwhelming preponderance of the class and race proved to be disaffected and disposed to rise ; keeping all these things out of sight, and dwelling only on the severities inflicted, which in that way of course were easily made to appear excessive. This was the only way in which they could sustain their case ; and they admitted that, if the danger was as great as the

Governor had represented, then it would be difficult to say that any deterrent measures would be excessive. The Secretary of State, who had recalled the Governor, declared the danger to have been fully as great as *he* had represented, and thus, upon the showing even of the assailants of the Governor, he was recalled and censured upon a state of facts the reverse of what would fairly justify his recall. For the late Secretary of State, in remarkable opposition to his Under Secretary, admitted that the facts *were* the reverse of what alone, upon their own admission, *would* justify his recall. That is to say, he admitted that the danger had been as terrible and formidable as the Governor had represented.

That it had been so ; that there had been not, as represented in the debate by the assailants of the Governor, a mere temporary disturbance, but a terrible danger arising from a formidable rebellion, was afterwards proved by the result of regular criminal proceedings before the ordinary tribunals and by many subsequent events. The Secretary of State (the Earl of Carnarvon) who had succeeded Mr. Cardwell, had taken apparently a strong view upon the subject in accordance with Mr. Buxton, and had written the following despatch on the day after the debate in the House of Commons to the new Governor, Sir. P. Grant, who had succeeded Sir H. Storks, pressing for a remission of the sentences on the rebels who had been convicted after the termination of martial law before the ordinary tribunals :—

“Your predecessor forwarded in his despatch to Mr. Secrétary Cardwell, No. 73, of the 24th of March, a return of the sentences inflicted by the Special Commission of Oyer and Terminer, held at Kingston between 24th January and 9th March last, on persons implicated in the disturbances in Jamaica, or arrested on charges of sedition and treason.

“*I find on examination of this return that many of the sentences thus inflicted are of great severity.* Thirteen men and two women are sentenced to penal servitude for life, and seven men and four women to penal servitude for twenty years, the charge being felonious riot.

“I have no wish to express any doubt of the justice or propriety

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sentences thus inflicted by a legally constituted tribunal; but it appears to me that as the investigation of the Royal Commission has enabled the Government to appreciate more clearly than was possible at the time the nature of the recent disturbances and the guilt of those implicated in them, it would be *desirable that the proceedings of the Commission specially appointed to try those persons should now be revised*; and I wish you, therefore, to call for the Judges' notes, and, after consultation *with the presiding Judge* under that Commission, to report *your opinion* whether, in any of the cases, *there are grounds for remitting any portion of the sentences.*"

Now this despatch deserves particular attention, because it was in accordance with the spirit of one of Mr. Buxton's resolutions in favour of a remission of sentences, a resolution, be it observed, which had been *negatived*, or at least was not adopted by the House of Commons, but which certainly was in strict consistency with the view upon which the late Governor had been removed. For if, indeed, the punishments had been excessive, in the only sense in which they could have been so consistently with the statements of the Report, viz., that too many persons, although guilty, were executed; then, indeed, it would naturally follow that *no more* should be punished on account of the same rebellion. This, however, was *not* the view taken by the new Governor, a man of firmness and experience, any more than it was the view of the House of Commons; and he wrote in answer in terms firmly declining for the present to entertain any proposition for remission of punishment. Indeed two of the prisoners had already been executed. There were, it will be observed, not less than eleven cases, each comprising a number of prisoners, one as many as near ninety, charged with treasonable conspiracy, but proceeded against for felonious riot, and most of them capital charges. Altogether there were above one hundred cases. The Governor wrote:—

"I find that in only one of these cases, namely No. 11 on the Calendar, —the Queen *v.* Bogle, Henry Theophilus, and others,—do any prisoners *now* remain undergoing sentence. Out of eleven cases, the accused persons

were discharged in three, and in one case the Attorney-General entered a *nolle prosequi* in two cases of murder; two prisoners, found guilty and sentenced to death, were executed; and in three cases the prisoners were sentenced to short terms of imprisonment, which all expired several months ago. Two cases remain. In one of these, that of Mr. Levien, tried for a seditious libel, the prisoner was sentenced to a year's imprisonment, and the sentence had about half its term to run when I took charge of the government of this colony. On full consideration, I thought it right to extend the mercy of the Crown to this prisoner, who was accordingly released. Thus the case No. 11, above mentioned, is all that remains to be dealt with."

This case, however, it is to be observed, numbered about thirty cases, charged upon two indictments, one for the capital offences of treason and murder, the other for the offence of felonious riot, under a colonial statute,—*not* capital. The Attorney-General had proceeded for the *minor* charge, and the sentences were penal servitude for life, or twenty years, the most severe sentences *short of* death. The new Governor thus wrote his deliberate opinion upon the cases *against* any remission of these sentences, an opinion which derived all the greater force from its being that of a civil ruler of sound sense and judgment, obviously very *averse* to the exercise of martial law beyond the exigency of an absolute necessity. Indeed it would appear that he had rather underrated the exigency under which his predecessor had laboured, exposed as he was to the formidable rebellion described *without* any adequate military force:—

"I should not faithfully submit to your lordship my full opinion upon this case if I did not say that in view merely to the future quiet of this island, it is with me a matter of deep regret that, from the moment when those measures of military execution which were necessary to the immediate restoration of the peace had had their desired effect, every prisoner whom it was resolved to proceed against at all was not tried by the method adopted in the trial now under revision. It appears to me that as soon as the immediate and paramount object was attained, such considerations as guide justice at all times came into force, and it further appears to me (which is my present point) that such considerations remain in full force down to the present time. It would be a great misfortune were any class

of people here to fall into the delusion that because certain hasty measures of severity have been unavoidably disapproved, the acts which called forth those measures, so far as they really were highly criminal and dangerous, are such as are thought lightly of by the highest authorities. The re-action after martial law must involve some risk of this sort; and it would be an unfortunate necessity were the Government obliged, on supreme considerations of a merciful justice, to do anything that might tend to confound a grave sentence of the law, regularly and solemnly pronounced, with some hasty proceedings which cannot be too greatly deplored. Having given the case of every one of these prisoners my best attention, it is my opinion that considerations of justice will not admit of any remission of the punishment in some of the cases; and that in others of them, though the mercy of the Crown may be extended to them at a future time, *it would not be advisable*, for the reasons to which I have above ventured to point, *to announce any remission of punishment for a long time to come*; and then only if the state of feeling in the colony recovers its tone.

“The judicial evidence in this case proves that the march and attack upon the Court-house on the 11th of October were premeditated as part of an intended insurrection; that there had been previous swearings in and drillings in order to this movement; that the assailants were to a certain extent an organised body, having drum and flag, marching under previously appointed commanders, and capable of dividing into two, and of advancing in two lines under separate captains, when it was so ordered; that occasionally in the course of the evening a sort of attempt to use military words of command, such as ‘order arms,’ ‘load,’ was made; and that the murder of certain persons who were murdered on that occasion was predetermined, was openly spoken of before the day of the occurrence amongst those engaged in the attack, and was boasted of afterwards by others so engaged. This evidence throws no light on the cause which may have led to the conspiracy, but it proves *that the assailants proclaimed, upon making their attack, their object to be ‘war,’ that the war announced was a war of colour, and that they themselves understood, the day after the slaughter, that what they had undertaken was war.*”

And a “war” between 450,000 blacks and 13,000 whites, with only 1,000 troops in the whole colony, and not more than 500 *effective and available* for actual operations in the disturbed districts, 600 square miles in extent, and containing a population of 40,000, among whom the rebellion, as the Commissioners stated, *was spreading with singular rapidity*. If Sir P. Grant had remembered the circumstances, and also had borne in mind that these elements of danger continued to exist until the last day of the

operation of martial law, seeing that it was not until then the reinforcements were *distributed*, he might have abstained from introducing the statement which appeared to imply that the deterrent measures of martial law were continued after they had had their desired effect; a statement, indeed, in which he only followed the opinion of the Royal Commissioners and the Secretary of State, but one arrived at, as has been seen, without any reference to the circumstances upon which the question must depend, whether, indeed, these measures *had* had their desired effect, the subsequent events showing that they had *not*.

That it had not been so, and that the colony was for some time afterwards in a most critical state, was proved in various ways by subsequent events, recorded in despatches and official documents. The new Governor appointed to supersede Mr. Eyre and preside over the Royal Commission, had to write to the Secretary of State again and again, representing the alarm and agitation still continuing in the colony on account of the insubordinate and rebellious spirit of the negroes, and the necessity for augmented military force to keep them in awe. With every disposition to make light of these alarms, the new Governor was compelled in plain terms to oppose to threatening language on the part of the negroes an appeal to military force. He wrote thus to the Secretary of State:—

“Considerable alarm has been experienced by the white and coloured population in the different parishes of this island, in consequence of the threatening language of the negroes. Amongst the latter also various rumours of the most absurd description, but at the same time calculated to excite and unsettle an ignorant and impressionable population, have been circulated, as to the temporary retirement of Mr. Eyre, and as to the consequences of my mission to Jamaica, and of the appointment of the Royal Commission.

“I have been disposed to treat the apprehensions of the one party, and the exaggerated credulity of the other, with great reserve and forbearance, because I hoped that the excitement and alarm would subside. But finding that the uneasiness and excitement still prevailed, and having received sworn informations from various quarters as to the truth of the reports

which reached me, I published a notification, which has been widely circulated in this island. A copy is transmitted for your information.

"This notification has produced a good effect, and I do not apprehend any disturbance of the public security, at any rate for the present."

The notification referred to was as follows :—

"It having come to the knowledge of the Captain-General and Governor-in-chief that threatening language is made use of in many parts of the country, tending to create alarm for personal safety and for the security of property, and it being also well known that certain reports are current, tending to mislead the labouring classes, and to create irritation and bad feeling amongst her Majesty's subjects, his Excellency strongly reprobates the use of such threatening language, and the circulation of such reports.

"His Excellency's duty is to uphold and maintain the law, and to protect all her Majesty's subjects in the pursuit of their lawful calling, and his Excellency declares that all the powers placed in his hands by her Majesty will be freely used for these purposes."

It is to be observed that if this notification—that is, a measure of recourse to military force—had its effect, it was because the new Governor, by reason of the reinforcements, *had* the military force to resort to, as his predecessor had *not*, when the rebellion broke out, nor until martial law was at an end.

The new Governor so strongly felt the necessity for maintaining the augmentation of the military force that he wrote thus on the subject about the same time :—

"With reference to your despatch, No. 14, of the 1st January, on the subject of the troops sent to Jamaica to aid in the suppression of the disturbances, I have the honour to report that I shall endeavour to send them back to Barbadoes and Bahamas as soon as circumstances will permit. But looking to the agitation and bad feeling which prevail in many parts of this island, I am of opinion that it would be imprudent to part with these troops until they can be replaced by others, or until the excitement produced by the late disturbances and by the appointment of the Royal Commission of Inquiry has subsided.

"As to the future force to be maintained in this colony, I would recommend that for some time one complete regiment of the line and one complete regiment of black troops should form the ordinary garrison. These regiments should not be called on to find any detachments to the other West India islands, but should be kept available for any services which may be required of them in this colony.

"At present a large naval force assists in maintaining tranquillity, and in allaying the fears of the white population, which is scattered in distant and isolated positions all over the island. But so large a proportion of the naval force destined for the North American and West India command cannot always be stationed in these waters, and some addition to the ordinary military force must be made when the ships are moved to other stations."

The importance of this, and its bearing upon the question of the maintenance of martial law, will be manifest when it is recalled to mind that the view of Mr. Eyre and of the Commander-in-chief was that it was necessary to keep martial law in operation until the reinforcements arrived and were distributed, so as by their presence to overawe the disaffected, keep down rebellion, and afford protection to the whites, and that it was for this reason martial law was maintained until the distribution of the reinforcements, and *only* until then.

Martial law, in short, in their view, was the compensation for the deficiency of military force which was necessary to keep rebellion down and prevent it from breaking out again, and the deficiency of which they believed could only be made up by the deterrent terrors of martial law. And now it appeared that, soon after martial law was terminated, the spirit of rebellion was so strong in the negroes that they could only be restrained from breaking out again into open rebellion by the actual calling out of military force. This was illustrated by a remarkable instance, thus narrated by the new Governor, Sir H. Storks, and which again raised a similar difficulty under his successor, Sir P. Grant, and is extremely illustrative of those peculiar difficulties in the condition of the colony which have been already alluded to in an earlier part of this work:—

"About five miles from Spanish Town is situated a property called 'Hartlands.' This estate has been for many years inhabited by a lawless population, and has deservedly acquired a very bad reputation. In old times runaway slaves took refuge there; and I have been informed that the

Government was obliged to employ a large force, for an extended period, in its endeavour to reduce the inhabitants to order, and something like obedience to the laws. On this land many persons are located whose titles to their holdings are disputed, and they are considered to be squatters. On the 12th instant the provost-marshal's deputy, with a surveyor and the inspector of police, proceeded to the spot, having for their object the execution of a writ of 'habere facias possessionem,' obtained by an order from the Supreme Court. On arrival at the ground, the provost marshal's deputy and the surveyor were resisted in the execution of the process of law, and in carrying into effect the order of the Judge. On receiving this report I consulted the Executive Committee and the Attorney-General, and found that all the proceedings as regarded the provost-marshal were legal and regular. I then decided that the law should be carried out, and I sent a message to the people on this estate to come in and hear my decision for themselves. At the same time, I sent an order to Kingston for a field officer and 100 rank and file to be moved by railroad on the morning of the 14th instant to Spanish Town, to join the detachment stationed here, and with a magistrate and body of police to proceed to Hartlands, and support the proper officer in carrying out the order of the Court.

"The people of Hartlands replied to my message by saying that they would wait on me the next morning. The troops having arrived, and the men from Hartlands not having made their appearance at the hour indicated, I ordered the magistrate and the troops, consisting of one field officer, six officers, and 150 rank and file, to march to the ground. On their way they met the men coming in to see me, and the troops were halted. On the men appearing at King's House I at once received them, and informed them that I was extremely displeased at what had taken place, and until they atoned for their conduct by showing obedience to the law I could hold no communication with them; that it was my determination to uphold the law by obliging everybody to obey it; and in case of resistance, that I *had ample means at my disposal to enforce obedience*. I added, that if after the process required by law had been carried out they had any complaints to make, or desired to offer any statement, I was prepared to consider their petitions, but I would hold no further communication with them. They promised obedience, and declared they would offer no further opposition. I then ordered the magistrate and the troops to proceed to the ground, and I am glad to say that everything passed off quietly."

But it is manifest it would have been otherwise if there had not been ample means at the disposal of the Governor to enforce obedience to the law. Months afterwards, the new Governor, who succeeded (Sir P. Grant), had to

report a renewed disturbance at the same place, only repressed by the same means :—

“In the month of March last Sir Henry Storks had occasion to bring to the knowledge of your lordship’s predecessor a difficulty which had arisen with certain negro settlers on Hartlands, an abandoned estate in the neighbourhood of Spanish Town, of which the proprietor had determined to resume possession. It will be within your lordship’s recollection that these settlers resisted the surveyors who had been sent to run the lines of property, and that Sir Henry Storks deemed it necessary to send a force of 150 soldiers in support of the police, in order to enforce obedience to the law. Further legal proceedings have since that time been taken by the proprietor to enforce his rights of possession, and finally judgment was pronounced by the court in his favour, and a writ of ejectment was issued against the settlers. This writ was entrusted to the Deputy Provost-marshal for execution. On his proceeding to Hartlands, on the 20th ultimo, to serve it, he was opposed by the settlers, and he thereupon returned to Spanish Town, and reported the circumstance to the Government.

“I may here mention that the proprietor, Mr. Hart, had offered terms of compromise which appeared to me to be fair and considerate. He had surrendered about 500 acres of the estate on which the main body of the settlers are located, and for which there was more or less of evidence that some price had been paid by them; and he had offered to consent to their living on other portions of the land, who, judging from the result of the legal proceedings, would seem to be nothing more than unauthorised squatters, to retain their houses and plots of ground on agreeing to pay rent.”

This however was declined, and the Governor had to warn the negroes, as his predecessor had done, that *the law would certainly be carried into execution by an adequate force*, a threat which of course would have been useless if not backed by the *presence* of an adequate force. The Governor therefore ordered an additional force to be sent to the place, so as to overawe any attempt at resistance which might be made. He at the same time got a Baptist minister who had used his influence on a former occasion to do so again, and doubtless his arguments were materially aided on both occasions by the presence of the adequate force. But the Governor’s comments are worthy of attention :—

"This case affords an illustration of the necessity in this country for a strong and efficient police force. Hartlands is within a few miles of Spanish Town, and I was able, therefore, to bring from Kingston a sufficient number of constables; but were a similar difficulty to occur in a distant part of the country, it might be impossible to collect a sufficient force, and the apparent weakness of the Government would be a direct encouragement to the negroes to resist the law."

So that it is manifest that the spirit of rebellion was still so strong among the negroes, that they could only be restrained by the presence of an adequate force. And the late Governor, it was forgotten, had *not* such a force during martial law.

The *ordinary* military force in the colony was but small, and the presence of the naval force more or less casual, and it will be seen that the present Governor stated the necessity for an increased military force in consequence of the disaffected condition of the negro population.

It must be manifest that in such a colony in such a condition it would be impossible to dispense with the power of declaring martial law; and accordingly, even while the inquiry by the Royal Commissioners was still proceeding, the Secretary of State wrote to the new Governor a despatch plainly implying the necessity for the maintenance of such a power:—

"Her Majesty's Government are desirous to receive from you a report upon the Act passed by the Legislature of Jamaica, 29 Vict. cap. 3. 'to enable the Governor of this island to declare martial law over the whole or any portions of the island by and with the advice of the Privy Council.'

"If it should ever unhappily become necessary again to resort to martial law, the circumstances of the moment must be extremely urgent, and it would doubtless not be right that the statutory of the authority for proclaiming martial law should be vested in a body which it might be difficult or impossible, to assemble. But, on the other hand, her Majesty's Government would be most unwilling to sanction any measure which would in any degree diminish these securities hitherto existing for due consideration in taking so serious a step. They wish you to report how far this Act supplies, in your judgment, the best available mode of reconciling these conflicting considerations, under the present actual circumstances of the colony.

"They take this opportunity of repeating their trust that no occasion

will arise for placing any portion of the island under such a proclamation, and their confidence that *nothing but the most urgent and manifest danger to the community will induce you to have recourse to martial law.* Should such a necessity occur, care must be taken that so soon as it shall be removed by the suppression of the disturbances, all measures of military severity shall be checked at the earliest possible moment, and an immediate return be had to the ordinary course of legal inquiry, and of the judicial trial and punishment of offenders." (Despatch of Mr. Cardwell, Feb. 8, 1866.)

And to this the new Governor replied in terms equally showing a sense of the necessity of maintaining such a power to declare martial law :—

"There can be no doubt that while the Governor of the island should have the means afforded him of obtaining, *without delay or difficulty*, proper advice and assistance before proceeding to proclaim martial law, it is at the same time important that every security should be taken that so serious a measure should not be adopted without the best consideration by a qualified and responsible body, recognised by statutory authority. If the existing authority continued, I should think the Privy Council such a body, but as the impending changes suspend their powers until the constitutional system be re-adopted, it would appear desirable that the subject be reconsidered, and some other course be resorted to for affording the Governor advice and the colony the securities which the circumstances require. As I am not aware, at present, of the course which her Majesty's Government will adopt as to the future constitution of Jamaica, I can only suggest that the Executive Council (should such a body be created) would be the best calculated for offering advice to the Governor, and *for sharing his responsibilities in proclaiming martial law.* With reference to the subject generally, I would venture to point out for your consideration the importance of establishing some regulations or rules for the conduct of *proceedings in a district where martial law is proclaimed.* The relative positions of the Governor and of the officer commanding the troops should be as far as possible accurately defined. The responsibilities and powers attaching to the troops and to the military tribunals should be settled by competent authority, and nothing, as far as foresight and experience can suggest, should be left to the doubt and uncertainty which unwittingly lead public officers into error, and sometimes submit the people to acts of undue severity, and often of questionable legality. In justice to the Executive Government of the colony, to the troops serving there, and to the public, this most important subject should be carefully considered, and if possible the proceedings to be taken under martial law should be laid down. As regards the last paragraph of your despatch, I confidently trust that no occasion will arise *which will oblige me to proclaim martial law in Jamaica*, and her Majesty's Government may rest

assured that *nothing but the most urgent and manifest danger to the community will induce me to have recourse to so extreme a measure.* Should such a necessity unfortunately arise, your instructions as regards its duration will be scrupulously attended to, but I have every reason to hope that the public tranquillity will not be disturbed, and that order and a ready obedience to the laws will be maintained throughout the island by the ordinary means at my disposal."

And no doubt when the ordinary means at the disposal of the Governor are ample, as they were, it would be comparatively easy; although still a matter not free from difficulty, and which required great energy and observation to maintain peace and order. But it is manifest that for the very same reason it would be otherwise when the ordinary means at the disposal of the Governor were not only not ample but utterly inadequate, and were known to be so by disaffected myriads ready for revolt. In such a state of things, upon the actual *breaking out* of a bloody rebellion in which thousands took part, and which was spreading, as the Commissioners reported, with singular rapidity over a vast tract of country, it was the view of the late Governor and his advisers that it was absolutely necessary, for the safety of the colony, to maintain martial law in operation until the arrival and distribution of military force, the presence of which might overawe the disaffected, and thus replace and supersede the deterrent terror of martial law. The basis of this view lay, on the one hand, in the existence of the *spirit* of rebellion, and, on the other hand, in the disparity of force; and the despatches of the new Governor abundantly showed the prevalence of the same *spirit* of rebellion, and that it was only kept down by the presence and occasional display of military force; and moreover, even with the presence of an abundant military force, it was still necessary to contemplate and prepare for an emergency which might again require the dread terrors of martial law. In matters, from their nature, not admitting of direct or positive proof, but necessarily, more or less, a matter of opinion upon inferences

and probabilities, it would be difficult to imagine stronger confirmation of the view taken by the late Governor. The new Governor had occasion to write soon afterwards:—

“The Governor of Jamaica labours under great difficulties from the almost impossibility of obtaining trustworthy and reliable information. The police force is worthless, and requires immediate re-organisation. The civil authorities, such as custodes, magistrates, and clerks of the peace, are more or less influenced by local associations, their apprehensions, and their prejudices. The clergy, both of the Established Church and the Dissenting denominations, see the negro through their own point of view, and report according to their sympathies or their impressions. However, amidst the labyrinth of conflicting opinions, one may dispassionately arrive at the conclusion that there is not much danger to the public security when no overt acts of turbulence or violence are committed, and when no proofs of illegal proceedings or intentions can be adduced, even by those most inclined to alarm.

“I believe this island at the present moment to be perfectly tranquil; but at the same time an impressionable and ignorant race can be easily incited to disorder, and for this reason I have thought it my duty to express my disapproval of the course pursued by some in calling class public meetings, as the readiest means of exciting the black population, not only by these proceedings, but by giving the friends of disorder an opportunity of agitating the people on the subject of such meetings.” (Despatch of Sir P. Grant.)

This was written by an experienced civil ruler, with the advantage of the experience derived from recent events; and it will be observed that neither he nor his predecessor, the immediate successor of Mr. Eyre, were able to advise that the power to declare martial law could be dispensed with.

Thus, many months after the occasion on which martial law had been exercised, with increased military force, and with all the light of past experience, the Government contemplated the possibility of a necessity for a recourse to those very measures on account of which Mr. Eyre had been recalled. And, there was yet another mode in which the propriety of the measures adopted by the late Governor was indirectly, but in the most remarkable way, recognised and established. It will be remembered that the

Secretary of State in his despatch recalling him, had stated that he had transmitted to the Secretary of State for War, and the Lords of the Admiralty, copies of the Report of the Commissioners, with reference to the conduct of the naval and military officers who had taken part in the measures of suppression, and had sat upon court-martial. The Lords of the Admiralty wrote to the Colonial Office in answer in these terms:—

“I have laid before my Lords Commissioners of the Admiralty your letter of the 18th June last, forwarding a copy of the report of the Royal Commission of Inquiry into the circumstances connected with the recent disturbances in Jamaica, together with a copy of a despatch in which Mr. Secretary Cardwell has conveyed to the Governor of the island the decision of her Majesty’s Government on the various matters to which the inquiry has been directed.

“My Lords have given the most careful consideration to these documents, especially in so far as they relate to the proceedings of naval officers concerned in the suppression of the rebellion. They consider the military measures adopted by the naval officers at the outbreak of the rebellion deserving of their commendation and approval. They have hitherto refrained from conveying the expression of their satisfaction to the officers engaged in the operations, but now that the report of the Commission is terminated they propose to direct Sir James Hope to convey to these officers the approval of the Board.

“A copy of the despatch, before being sent to Sir James Hope, will be communicated to the Secretary of State for the Colonies.

“With regard to the proceedings of the naval officers detached from their ships, in command of seamen and marines for duty on shore, my Lords desire to make the following remarks.

“These officers were necessarily young and inexperienced in the conduct of such operations; no definite and detailed instructions were given them for their guidance, and their minds were necessarily acted upon by the alarm and excitement which everywhere prevailed around them. In the majority of cases in which punishments were awarded and sentences carried out under the orders of naval officers during the prevalence of martial law, the proceedings of the courts-martial over which they presided, or of which they presided, or of which they were members, were submitted for confirmation and approval to superior military authority.

“This was notably the case in the trial of George William Gordon, which was presided over by a naval officer. The proceedings and sentence, and its execution, received the confirmation and approval of the Major-General and the Governor of the island. With regard to the other acts committed by naval officers under the authority of military law, when left

as they were to the exercise of their own judgment, my Lords will not fail to express their reprehension of any acts of cruelty or needless severity.

"Looking to the very difficult position in which these young officers were placed, away from the superior officers to whom they were accustomed to look for instruction, my Lords do not deem it necessary to order any further steps to be taken.

"Since the occurrence of these events my Lords have caused to be prepared, by the advice of the proper law officers, regulations for the guidance and instruction of officers when employed on shore in aid of the military and naval services.

"These regulations, of which a copy is herewith enclosed, have been furnished to naval commanders-in-chief, with directions that they may be strictly attended to, should occasion arise; and my Lords trust that they will prevent the commission in future of irregularities and excesses in the performance of any similar operations which her Majesty's naval officers may be called upon to perform."

In another despatch to the Admiral on the station the Lords of the Admiralty wrote to the same effect:—

"My Lords are fully sensible of the very novel and difficult position in which Lieutenants Brand and Oxley were placed when suddenly called upon to enforce martial law in the proclaimed district; without any instructions, and without the assistance of persons acquainted with the forms or proceedings of courts of justice. Lieutenant Brand in the discharge of his duty as president of the courts-martial at Morant Bay, appears to have been actuated by an earnest desire to satisfy himself of the truth or falsehood of the charges brought against the prisoners, but my Lords regret that he should have been satisfied with evidence that, in some cases, would not have been admitted before any ordinary tribunal, and in others would not have been thought sufficient. The responsibility of carrying into execution the sentences recommended by the court does not rest with him; since it appears that the whole possibly were in every case submitted for the consideration of the superior military officer by whom the orders for carrying the sentences into effect were given. Their Lordships trust that the instructions which have been drawn up for the guidance of officers in any similar case that may occur, and which have been furnished to the officers in command of stations where there are British colonies, will prevent a recurrence of the errors which their Lordships have pointed out."

It cannot but be observed what a contrast the moderate and temperate tone of the modified degree of disapproval here conveyed, as to the conduct of the naval officers engaged in the suppression of the rebellion, affords to the

coarse, cruel, and wholesale abuse cast upon them by the assailants of the late Governor; obviously and indeed assuredly with a view to enhance the responsibility thrown upon *him* for allowing such excesses. The contrast is the more remarkable when it is remembered that the naval officers (on account of the military force in the colony being so small) necessarily played a prominent part in the trials by court-martial, and it was a naval officer who presided on the trial of Gordon, the most obnoxious proceeding of all, and one for which the Governor had been most assailed, and as to which he and the military commander were charged with murder. The language used by the Board of Admiralty to the very officer who had presided on the trial, lent no sanction to this most absurd and atrocious accusation; and the modified degree of disapproval they conveyed, was rather with a view to the future than the past, and, as to the past, was marked by a spirit of sensible and charitable allowance to the excitement caused by a bloody rebellion.

Moreover, the Admiralty fully recognised the fundamental principle of martial law that it was military authority, for they actuated that it was the military commander who was mainly responsible. The same principle was embodied in their instructions, which were based upon the view that the military commander had the supreme power.

The instructions alluded to in the above were as follows :—

“Instructions for the Guidance of Officers and Party when the Ordinary Law prevails.

“7th. If called upon to act for the suppression of riots or other disturbances when the Ordinary Law prevails, the following precautions are to be strictly observed :—

“I. The party is to be employed only on the requisition of the civil authority.

“II. The party is not to act without the presence of the civil authority,

except for purposes of self-defence, or the prevention of actual violence to the persons or property of her Majesty's subjects.

"III. The party is to fire only by order of the officer in command.

"IV. Notice is invariably to be given that the fire will be effectual.

"V. The party is to be divided into four sections, of which two are always to keep their arms loaded.

"VI. Care is to be taken, as far as may be possible, that innocent persons do not suffer by the direction of the fire.

"VII. In case of riot, the mob is never to be allowed to close within fifty yards of the party, and if a charge is required it is to be made only by half the party, the other half being moved up in reserve.

"VIII. If it is requisite to take up a position for defence, care is to be taken not to place the party in any building which can be fired, or in any position which can be overlooked, and proper precautions are to be taken on the march to prevent surprise.

"IX. The senior officer, if not present, is to be kept fully informed of the proceedings of the party, and of all circumstances necessary for his knowledge, and he is to transmit all important information to the Commander-in-chief.

"8th. In regard to command, Art. 2, page 45, of the Admiralty Instructions is to be adhered to, observing, however, that when the public service renders such a course advisable, the naval and military forces may be placed under one command—naval or military, as most expedient.

"Instructions to the Commanding Officer of a Party landed when Martial Law has been proclaimed.

"9th. If martial law should be proclaimed in any district, you are then to follow the directions of the officer appointed to the military command of the district.

"10th. *The arbitrary will of such officer in such case supersedes the ordinary law for the time being in the same manner and degree as it would if the district placed under martial law were an enemy's country.*

"11th. You are to require directions in writing from the officer in military command of the district under martial law as to your conduct in all matters of importance, especially in regard to the treatment of prisoners taken by you, whether they be taken in the actual commission of violence against the persons or property of her Majesty's subjects, or under other circumstances.

"12th. *It is competent for the officer in military command of the district under martial law to order prisoners to be brought to trial in a summary manner before a Council, to be named as he may direct.*

"13th. If you are to preside over any such Council, usually termed a court-martial, although not necessarily constituted under the provisions of the Mutiny Act, you are to request instructions in writing from the officer in military command of the district, and you are not to carry into execu-

tion any sentence of such Council, whether of death or otherwise, without being empowered so to do in writing by such officer.

"14th. You will take minutes in writing, if employed on any such Council, and you will require such of your officers as may be so employed to take minutes in writing of all the proceedings and evidence, to be communicated to the Commander-in-chief for his information.

"15th. You will take care, if so employed, and you will direct your officers, when so employed, and apply for the assistance, if possible, of a legal adviser.

"16th. In case it shall not be practicable to obtain directions in writing *from the officer in military command of the district*, you will endeavour to obtain directions in such mode as will admit of no subsequent doubt as to their tenor, and shall commit them as soon as possible, if practicable, to writing.

"17th. Under no circumstances are houses or property to be destroyed, except under the exigencies of military operations or of self-defence, or under an order from the officer in military command of the district under martial law.

"18th. The officer in command of a party is to keep a journal detailing all his proceedings, a copy of which is to be forwarded for the information of the Commander-in-chief.

"19th. In conclusion, you will observe that these Instructions are framed for your guidance in the absence of specific directions from the officer in the military command of the district, and you are in all matters relating to operations on shore to follow his directions.

"20th. If any directions *given by the said military officer* should conflict with any of these Instructions, you are nevertheless to act in accordance with his directions, first bringing to his notice, if possible, these Instructions. You are carefully to weigh the comparative importance of any conflicting instructions you may receive, remembering that you will still be responsible to your naval superior for the execution of any orders you may receive from him."

With regard to the military officers who had been engaged in the suppression of the disturbance, it is to be observed that their part in the matter was by far the most important, since it included the Commander-in-chief of the colony, under whose authority the military commander of the district under martial law acted in carrying it out, and to whom he reported ; and it also included the military commander, who thus carried out martial law, and the officers who commanded the detachments by the soldiers belonging to whom the excesses had been com-

mitted; as well as most of the officers who sat on courts-martial. In answer to the communication of the Secretary of State for the Colonies, transmitting the Report, the following was written from the War Office:—

“I am directed by the Marquis of Hartington to acknowledge the receipt of your letter transmitting copy of Report of the Jamaica Royal Commission, 1866, and to acquaint you, for the information of Mr. Secretary Cardwell, that his lordship has forwarded the Report in question to the Field Marshal Commanding-in-chief, calling his Royal Highness's attention to ‘comments on punishments inflicted’ (at page 26 of the Report), in so far as the conduct of the officers of the army is affected by the transactions referred to.”

Subsequently there was a letter from the War Office, stating that it had been decided that Ensign Cullen and Staff Assistant-Surgeon Morris should be put on their trial before a court-martial, on a charge of wantonly ordering prisoners to be shot. The court-martial was composed of officers entirely independent, sent out from England for the purpose. Its sittings were most protracted, and resulted in an acquittal. The charge against Ensign Cullen was as follows:—

“For scandalous conduct, unbecoming the character of an officer and a gentleman, in having, on the 21st October, 1865, in the county of Surrey, in the island of Jamaica, during the continuance of martial law, which had been proclaimed there for the purpose of suppressing an insurrection and for the preservation of the public peace in the said island, cruelly, wantonly, and wrongfully caused three men severally named . . . to be shot to death; the said act not being done by him, the said Ensign Cullen, in good faith, for the purpose of suppressing the insurrection, or for the preservation of the public peace in the said island.”

And the case as stated by the prosecutor, the Deputy Judge Advocate of the Court, was as follows:—

“The witnesses for the prosecution will tell you that on that morning the three men who are named in the charge, together with another, named Francis, were taken prisoners, for stealing nails and corn at Duckenfield, by one Halliday, who took them to one Phillips, the headman on Duckenfield, who delivered them over to three constables, Bryan, Hill or

Wills, and another, to be handed to the military. As the three constables, with the four prisoners, were approaching the suspension bridge, one of the prisoners, named Francis, got his hand out of the rope that secured him, and made his escape into a canefield. About the same time some of the soldiers saw the prisoners, and began to cry out, as the witnesses will depose, 'Prisoners are coming, prisoners are coming !' The three prisoners were brought into the Post Office, and were secured to a post or to several posts in the Piazza, and they were delivered over to Ensign Cullen. The witnesses will tell you that Ensign Cullen directed the men to be flogged, and that application was made to Mr. Manning, the postmaster, for some twine to make a cat with. Some conversation then took place between Ensign Cullen and Dr. Morris. Nothing was said to the prisoners ; but in the presence of Ensign Cullen, if not by his direct order, the three men were untied from the post by the soldiers, and were taken about eighty yards off. Dr. Morris went with them, and Ensign Cullen also. The men were then forthwith secured to a bamboo fence, and shot by the soldiers. Ensign Cullen was looking on, probably, it will appear, at a little distance in rear. Whether he gave an order to fire immediately before the men did fire is not so certain. One of the prisoners was not killed by the discharge ; upon which Dr. Morris took a rifle, and fired it at the prisoner (and as the witnesses will depose), killing him. The soldiers then returned to their houses, and shortly afterwards resumed their march to Golden Grove, where they arrived the same afternoon."

Now, upon this evidence, as the men taken were only charged with a petty civil offence, which, if cognisable by martial law at all, was only slightly punishable, and was certainly not capital ; and as it appeared they were not taken in arms, or in the act of any murderous or felonious outrage, they would certainly, if they had been *tried*, have been sentenced to some punishment *not* capital, and therefore their execution was wanton, and a gross abuse of martial law, and *an act of deliberate murder* in those who committed the act, and on the part of the officers *if they ordered it*, or stood by and allowed it ; for it could not have been done under *any* belief, however rash or erroneous, that the men were worthy of death, or could properly be executed under martial law. Here, therefore, if the evidence was true, was a clear case of murder, in the *soldiers*, at all events ; for even orders of an officer will not not justify an act of obvious murder.

And it is most observable that the soldiers, who were clearly guilty of murder, if there was any truth in the evidence, were *not* put upon their trial for murder, nor did the Commissioners recommend that they should be; though after a careful investigation of the charge against the officers, upon which they were unable to come to a conclusion, they recommended further inquiry as to the *officers*; and hence the court-martial upon the charge above stated, of which the Secretary of State (Lord Carnarvon) wrote, naturally enough, that it was murder, or nothing :—

“Until Ensign Cullen and Staff Assistant-Surgeon Morris shall have been proved guilty of the acts with which they are here charged, I am bound to presume that they are innocent; but if, unhappily, the acts charged should be proved against both or either of them, I need not say that justice would not be satisfied by the mere infliction of the sentence authorised by the Mutiny Act and Articles of War for behaving ‘in a scandalous manner, unbecoming the character of an officer and a gentleman.’ Whilst that Act and those Articles make no provision for trial by court-martial for murders or other offences, simply as such, and which are not military crimes in any other sense than as being committed by military persons, it is enacted, in the 76th section of the Mutiny Act, that ‘Nothing in this Act contained shall be construed to extend to exempt any officer or soldier from being proceeded against by the ordinary course of law when accused of felony or of misdemeanours, or of any crime or offence other than the misdemeanours or offences hereinbefore mentioned.’ If, therefore, the results of the present courts-martial in the cases of Ensign Cullen and Staff Assistant-Surgeon Morris should be such as to bring the charges home to both or either of them, I have to instruct you to take such steps as, in the opinion of your Attorney-General, you may be legally competent to take for the trial before the ordinary tribunals of the offender or offenders.”

That is, in the event of the officers being found guilty by the court-martial. ‘But they were *acquitted*, and apparently it must have been upon the ground that *there was no truth in the evidence at all*, that the whole story was a fabrication. For if there was any truth in it, that is, if the acts of homicide were really committed, with or without the sanction of the *officers*, then, at all

events, it would be clearly murder in the soldiers, the actual perpetrators of the acts of homicide. Either, therefore, it must have been believed that there was *no truth whatever in the whole account*, or there was no real desire to bring to justice the actual perpetrators of alleged atrocities or excesses. The fact is beyond all doubt that, although the Commissioners drew particular attention to the cases of several black soldiers who had wantonly shot prisoners, in one instance *ten at a time*, and though these men, being in the service of the Crown, were under its control, and could have been sent home in custody for trial, no step was taken to bring these men to justice. It is to be added, that no steps were taken by the authorities against any other military officers, nor against the military commanders, or the Commander-in-chief of the colony.

With regard to the responsibility of civil functionaries for the exercise of martial law, in the most important case of all, that of the Governor, he had taken no part in it, and given no orders within the district under martial law, so that his responsibility was, as regarded the exercise of martial law, confined to his allowing its declaration and continuance. There were, however, several persons who had been arrested by him out of the declared district, and sent into it for trial by martial law, if it should be found that there was sufficient evidence to warrant it. One of those persons was Gordon, who had been tried by order of the military authorities. They, considering the evidence sufficient, convicted and executed. Another, a person named Philips, was in like manner sentenced by the military authorities to be flogged. Others were merely imprisoned and detained; and one of them, a person named Vinen, claimed compensation. His claim was referred to the new Governor, the President of the Royal Commission, and he reported thus upon it:—

"Mr. Vinen was *arrested in good faith* by the authorities of Jamaica, and on *reasonable suspicion*, as *an intimate friend of Mr. G. W. Gordon, who was considered to be the prime mover, if not the author, of the disturbances which took place.* I am of opinion that he has no claim to compensation on account of the proceedings of the colonial authorities towards him during the disturbances." (Despatch of Sir H. Storks, July 20, 1866.)

The effect of this report is most important, and its terms are most significant, with respect to its bearing on the case of Gordon. For all the cases were on the same footing as regarded the arrest out of the district, and as regarded their having been personally directed by the Governor, on suspicion of complicity in the rebellion, and as regarded their being left in the hands of the military commanders. And it is manifestly the effect of the despatch that *none* of the authorities would be answerable even civilly, (for this was but a claim for compensation,) for the arrest or detention; and that as regarded everything that happened after the parties were carried into the declared district, it is evident that Sir H. Storks considered that it would be the military commanders who would be responsible, for he does not say the "Governor," but the "authorities." Finally, it is pretty plain, from the terms of his despatch, that he considered it sufficient reason for so dealing with a man, that he was an intimate associate of Gordon, "who was considered to be the prime mover, if not the author, of the disturbances;" and this plainly implied that, in the opinion of Sir H. Storks, Gordon was justly believed to be so, if, indeed, it does not imply that he himself did not so consider. The terms of the Report closely tally with those of the special finding of the Commissioners which legally fix Gordon with the guilt of inciting to rebellion. At all events, as the late Governor had not given a single order within the district under martial law, or had not in any instance directed the execution of martial law, it must be obvious that his responsibility was moral or political, rather than legal or criminal.

It was abundantly manifest from the tone of the debate in the House of Commons that it was not the feeling of the House that any prosecution should be instituted against the Governor or military commanders ; for of course such prosecutions, if instituted, ought to have been instituted by the Government. The late Government, it is to be remembered, had, with the tacit consent of Parliament, sanctioned the Bill of Indemnity, which ran thus :—

“ And whereas military, naval, or civil authorities, necessarily employed in the prompt suppression of the atrocities aforesaid, may, according to the law of ordinary peace, be responsible in person or purse for acts done in good faith, for the purpose of restoring public peace, and quelling the rebellion aforesaid ; And whereas it is expedient that all persons who-soever, in good faith, and of loyal resolve, have acted for the crushing of this rebellious outbreak should be indemnified and kept harmless for such their acts of loyalty ; Be it therefore, and it is hereby enacted by the Governor, Legislative Council, and Assembly of this island :—

First.—That all personal actions and suits, indictments, informations, attachments, prosecutions, and proceedings, present or future whatsoever, against such authorities or officers, civil, military, or naval, or other persons acting as last aforesaid, for or by reason of any matter or thing commanded, ordered, directed, or done since the promulgation and publication of the proclamation of martial law aforesaid, whether done in any district in which martial law was proclaimed, or in any district in which martial law was not proclaimed, in furtherance of martial law, that is to say, on, from, and after the 13th day of October last past, and during the continuance of such martial law, in order to suppress the said insurrection and rebellion, and for the preservation of the public peace throughout the island, shall be discharged and made void ; and that every person by whom such act, matter, or thing shall have been advised, commanded, ordered, directed, or done for the purposes aforesaid, on, from, and since the said 13th day of October, and during the existence of such martial law, shall be freed, acquitted, discharged, and indemnified, as *well against the Queen's most gracious Majesty*, her heirs and successors, as against all and every persons or person whomsoever.

“ Second.—And it is hereby also enacted, that his Excellency Edward John Eyre, Esquire, Captain-General and Governor-in-chief, and all officers and other persons who have acted under his authority, or have acted *bonâ fide* for the purposes and during the time aforesaid, whether such acts were done in any district in which martial law was proclaimed, or in any district in which martial law was not proclaimed, are hereby indemnified in respect

of all acts, matters, and things done in order to put an end to the said rebellion ; and all such acts so done are hereby made and declared to be lawful, and are confirmed.

“Third.—In order to prevent any doubt which might arise whether any act alleged to have been done under the authority of the Governor, or to have been done *bond fide* in order to suppress and put an end to the said rebellion, was so done, it shall be lawful for the Governor for the time being to declare such acts to have been done under such authority, or *bond fide* for the purposes aforesaid ; and such declaration, by any writing under the hand of the Governor for the time being, shall in all cases be conclusive evidence that such acts were done respectively.”

Upon this Act, which, it will be observed, mentioned the Governor by name, the Secretary of State had, as already mentioned, written as follows :—

“Her Majesty’s Government have been advised by the law officers of the Crown that the effect of the Indemnity Act will not be to cover acts done either by the Governor or by subordinate officers, unless they are such as (in the case of the Governor) he may have reasonably and in good faith considered to be proper for the purpose of putting an end to the insurrection, or such as (in the case of subordinates) have been done under and in conformity with the orders of superior authority, or (if done without such orders) have been done in good faith and under a belief, reasonably entertained, that they were proper for the suppression of the insurrection, and for the preservation of the public peace in the island. As regards all acts done by or under military authority, her Majesty’s Government are advised that the proclamation of martial law under the Island Statute of 1844 operated within the proclaimed district to give as complete an indemnity as the Indemnity Act itself. But—

“1. For any acts done beyond the proclaimed district the authority of the Act of 1844 and of the proclamation is inapplicable.

“2. Civilians, who may have acted *bond fide* for the suppression of the rebellion, although without military authority, would have a protection secured to them by the Indemnity Act which they might not obtain from the mere operation of martial law.

“3. Under the Indemnity Act the certificate of the Governor is conclusive for the protection of subordinates. I have already directed you, and your own judgment, doubtless, would have led you to the same conclusion, how careful you must be in giving these certificates ; and, with this precaution taken, her Majesty’s Government have determined that the Act of Indemnity ought to be left to its operation.

“I have communicated copies of your Report to the Secretary for War and the Lords of the Admiralty, who are the proper judges of the conduct of the military and naval officers engaged in these transactions. On my

own part, I have to request that you will cause careful investigation to be made in those cases of civilians which appear to require it, with a view to such further proceedings as may be requisite and just. It will not be desirable to keep alive in the colony the heart-burnings connected with these lamentable occurrences by any very minute endeavour to punish every act which may now be the subject of regret. But great offences ought to be punished. I rely on your government to accomplish this necessary object, and shall expect to receive a full report of the measures which have been taken with that view. You will, of course, be very careful not to give certificates under the Indemnity Act in any cases in which there is reasonable ground to question the propriety of giving them."

The Secretary of State (the Earl of Carnarvon, who had succeeded Mr. Cardwell) had very soon after the Report, prior to the debate in the House of Commons, written to the new Governor, pressing upon his attention the prosecution of any civilians who might appear to have been guilty of excesses :—

"By Mr. Secretary Cardwell's Despatch, No. 173, of 18th of June, your predecessor was instructed to institute a careful investigation of those cases in which grave offences had been laid to the charge of civilians during the suppression of the recent disturbances in Jamaica, in order that such further proceedings might be taken as were requisite and just. I have no doubt that this most serious and painful duty will occupy your immediate attention, but it is not the less my duty to express to you the great importance which her Majesty's Government attach to a close and complete investigation of those cases which appear to you to call for it, and their anxiety that all classes in the Island should know that in these as in all other cases they may rely on a strict and equal administration of justice without fear or favour at the hands of the law and the representative of the Crown. I have to instruct you to furnish me at the earliest day with a report of the proceedings which you have taken."

To this the Governor, Sir H. Storks, returned the following answer, enclosing the opinion of the Attorney-General of the colony :—

"With reference to the despatch of your lordship's predecessor, No. 173, of the 18th of June, by which I was instructed to cause careful investigation to be made into those cases of civilians which appear to require it, with a view to such further proceedings as may be requisite and just, I have the honour to report that I have put myself into communication with

the Attorney-General on the subject. Mr. Heslop at once proceeded to consider the evidence adduced before the Royal Commission, and has submitted to me a minute, a copy of which I transmit for your lordship's information. The course which the Attorney-General proposes to follow appears to me the only one open to him, and will no doubt be approved and carried out by the order of my successor. I have been very careful as to granting certificates under the Indemnity Act, and have only given one, in confirmation of a certificate given by Mr. Eyre to a custos against whom an action has been brought for false imprisonment, the custos having acted under the written order of Mr. Eyre."

The opinion of the Attorney-General, which was enclosed, was as follows :—

"In re Martial Law, Jamaica, 1865.

"The very large discretionary power vested in the Governor by the Secretary of State's (Mr. Cardwell) despatch fortunately need not, and indeed cannot, be determinedly exercised till full opportunity has been afforded for consideration of the evidence given before the recent Royal Commission.

"The scope of that Commission was quite other than directly judicial, or even accusatory. For instance, it was not necessary under it to ascertain the persons who had been or might be supposed to have been subjected to undue or excessive punishment for alleged offences ; and so, the minutes of evidence taken by the Commission do not, in most of such cases, disclose enough to frame indictments on without further inquiry with that object.

"As there was no accusation of crime before the Royal Commissioners, to which any person was entitled of right to make answer, or which to question, the evidence taken then and before them would not be available in any prosecution for offences which it may be eventually thought right thoroughly to investigate ; even if the proof of such evidence having been given could otherwise be established than by the mere printed report of that evidence.

"I would propose, with the sanction of superior authority,

"First. To investigate magisterially the details of the more serious cases, in the presence of accused persons, and according to the ordinary course of law.

"Secondly. To prosecute such of them as may afford reasonable grounds for expecting a just conviction.

"I here refer to the acts of civilians alone, I being concerned only with them.

"I have had opportunity to read nearly one-half of the copious evidence, and have used it. No bill of indictment can be preferred before the 8th October next ; and in the meantime preliminary investigation can be made

for judicial proceedings, based on the information given before the Royal Commission.

“The case against Provost-marshal Ramsay must certainly be put in train for trial, whether upon issue of law or fact; but it will be for the decision of his Excellency the Governor whether others, how many and whom, shall, consistently with the qualification of Mr. Secretary Cardwell's despatch, be prosecuted to judicial determination.

“I think the stipendiary magistrate in the immediate neighbourhood of the places of outbreak would best be able, from local knowledge, and an absence of local personal interest, to conduct the necessary preliminary examinations; but I am bound to do this myself if his Excellency should consider it more expedient.”

It will be observed, that there was not only no indulgence shown by the Government to those who had been engaged in the suppression of the disturbances, but, on the contrary, they were put under every possible disadvantage. A Commission of Inquiry had first been instituted, in order to obtain evidence against them, which was virtually extorted, (for a refusal to answer Royal Commissioners, if it was possible, on the part of officers of the Crown, would have been attended with very much the same effect,) and then, upon the admissions thus obtained, prosecutions were pressed on with the whole weight and influence of the Government.

The Secretary of State (the Earl of Carnarvon) wrote in answer to the above:—

“I have received Sir H. Storks's despatch, marked ‘Separate,’ of the 6th ult., with copy of memorandum by the Attorney-General of Jamaica, as to the mode of proceeding to be adopted in those cases of civilians in which there may be *prima facie* evidence of great offences having been committed in the suppression of the late outbreak, or in which it may appear to you that a close and complete investigation is called for.

“I see no reason to doubt that the preliminary proceedings suggested by Mr. Heslop are those which may best be adopted in order to bring to trial those who, on the evidence taken by the Royal Commission, or from other information, may be justly suspected of having committed great offences under cover of martial law. But in cases in which there is information before the Government justifying such suspicion, and in which, nevertheless, no accusation is brought by private persons, it would seem to be necessary that the local government, by the agency of the Attorney-

General, or such other agency as may be considered most available and efficient, should initiate and prosecute the proposed preliminary inquiry before the stipendiary magistrate, as well as conduct any subsequent prosecution to which such inquiry may lead." (Despatch, September 12th, 1866.)

In a subsequent despatch the new Governor, Sir P. Grant, wrote to the Secretary of State, in continuation of the above answer of his predecessor, Sir H. Storks :—

"I have to report that I have just had a consultation with the Attorney-General on those cases in which grave offences have been laid to the charge of civilians during the suppression of the recent disturbances here.

"The Attorney-General has not yet quite gone through the whole of the very voluminous evidence taken by the Royal Commission, in which the indications of such cases as are in question are to be found. But it is not likely, I think, that more than three cases will be brought forward by him as requiring, from their character, and taking into consideration the chances of conviction, to be considered with a view to public prosecution.

"The mass of the cases in which the grave offence has been imputed to persons engaged in the suppression of the disturbances are cases in which military officers were concerned, and these cases are for the consideration exclusively of the military authorities. There is only one case, as I understand, in which a civilian is concerned, wherein life has been taken in a manner charged as unjustifiable. This is the case of Mr. Ramsay, who will be tried for murder at the next sessions. In the other cases, the imputation is for flogging unjustifiably, or in an unjustifiable manner. When the Attorney-General reports upon these, the question of a public prosecution will be determined, to the best of my ability, in accordance with the spirit of the general instructions which my immediate predecessor and myself have received on the subject.

"Excluding Mr. Ramsay's case, all the civilian cases fall under the legal designation of assault, and in any and all of them it is and will be in the power of the complainants themselves to prosecute the persons complained of, either civilly for damages, or criminally. I apprehend, therefore, that in making any of such cases the subjects of public prosecution, the object should be to select for this special mark of the condemnation of Government such abuses of power as have tended most notably to bring discredit upon the administration of the colony.

"Whatever has been done reasonably, and in good faith, for the suppression of the insurrection, or in obedience to the orders of the Government, will be considered, as I understand, to be protected by the Act of Indemnity."

To this the Secretary of State replied :—

“I approve of the principle laid down in the fourth paragraph of your despatch, as that by which you propose to be guided in selecting for public prosecution civilians charged with grave offences in the suppression of the late disturbances.” (Despatch, 28th September.)

The Governor wrote :—

“I had anticipated the wishes expressed by your lordship in your lordship's despatch No. 48. The Attorney-General, by my directions, has sent an agent to St. Thomas-in-the-East, to seek out, on the spot, the witnesses who have given evidence before the Royal Commissioners as to such grave offences, and to obtain their depositions, with a view to the prosecution of the offenders. I have not yet received the agent's report. I hope to be able to send it to your lordship, with copies of the depositions, by next mail ; but I am informed by the Attorney-General that several cases of cruel or unauthorised flogging were made out, which he deemed proper subjects for public prosecution. Bills were accordingly presented to the grand jury at the Circuit Court at Morant Bay on the 18th instant ; but as your lordship will learn from the report of the proceedings transmitted in my despatch of this date respecting Mr. Gordon Ramsay, the grand jury ignored the bill in one case, that of John Woodrow, for the unwarrantable flogging of certain women ; and the other cases were adjourned in consequence of the inability of the Crown witnesses to attend, owing to the rains.

“I understand from the Attorney-General that the case of Woodrow, in which the jury ignored the bill, was one of the best supported of the flogging cases, and he was confident of a verdict could he have got it to a petty jury.”

From the last paragraph of the above despatch, as well as from other passages in the despatches, and from the whole course of the proceedings in the colony, subsequent to the Report of the Royal Commissioners, it will abundantly appear that the Attorney-General of the colony cordially seconded and carried out the policy which appeared to be suggested by the Secretary of State, in accordance with the influences exerted upon the Government at home, viz., to exercise the utmost possible lenity towards those who had been concerned in the rebellion, and the utmost possible severity towards those who had been engaged in its suppression. It is significant of the spirit of this policy and the one-sided view of the case in which it had its origin, that the

rebellion is always alluded to in the despatches, not as a rebellion, but as the "disturbances," just as if it had been a mere local riot, instead of a terrible and formidable rebellion, a war of extermination against a small white population. It is important to bear in mind that this was the view in which Mr. Eyre was condemned.

The spirit here noted was manifested in the manner in which the prosecutions against those engaged in the suppression of the rebellion were conducted. They were emphatically *one-sided*, and this perhaps caused their failure.

As severe imputations were thrown upon the administration of the criminal law in Jamaica with reference to these cases, it is desirable to draw attention to them.

The charge of Mr. Justice Ker in the case of Ramsay, the Provost-marshal, may well be here inserted as a good illustration of what a charge to a grand jury ought to be, and as a very clear and admirable exposition of martial law, and the law as to the criminal liability of those who exercise it. And the case is also a remarkable illustration of the danger of founding criminal prosecutions upon imperfect or one-sided statements of the facts. The learned judge said :—

"It is now matter of local, I may almost say general history, that on the 11th of October, 1865, or little more than a year ago, a popular outbreak of a very formidable character occurred in this parish. On the 13th, under a statute which was passed in the year 1845, martial law was proclaimed, *the effect of which was to place the entire disturbed district under the military power.* How far this circumstance will affect, from a legal point of view, the complexion of the act presently to be mentioned, will be explained more fully before I conclude. To carry out this law a distinguished officer of the royal army was selected ; who by an order dated shortly after the outbreak—at all events previously to the occurrence which forms the subject of this indictment—appointed Mr. Ramsay, then filling the post of inspector of police for the precincts of St. Catherine, Provost-marshal. It is material to observe that there can be little doubt Colonel Nelson, the officer referred to, had perfect authority to make this appointment. I may remark, in passing, that for the duties to which he was so nominated, Mr. Ramsay's qualifications were of a rare, almost unique kind ; but with that consideration we have nothing to do at present. But, acting in this

capacity, on the 18th of October Mr. Ramsay conceived himself authorised to order Marshall to be flogged for some breach of military regulation, apparently for being abroad without a pass. Whether he was justified in this proceeding is irrelevant to the inquiry before us. What occurred, however, immediately afterwards, is of the utmost importance in connection with the investigation upon which you are about to enter. *It is stated* that after the flogging, or more correctly after the forty-seventh lash, fifty being the sentence or order, Marshall, smarting from the pain, turned towards Ramsay and ground his teeth. Ramsay, whether, as is urged in his defence, considering the conduct to savour of mutiny, and requiring, therefore, an exceptional display of vigour at his hands, the rather that the party of order was numerically weak, and that of disaffection or suspected of disaffection numerically strong; or, as is suggested on the behalf of the Crown, vindictively, cruelly, and in the mere wantonness of power, thereupon did the act for which he is now sought to be made responsible. He ordered Marshall to be hanged, who was hanged accordingly. The regular course would have been to have submitted to the award of a court-martial. Ramsay as Provost-marshal had no judicial, but only ministerial authority. But the charge is of so grave a nature that it will be expedient to give the statements of the witnesses in their own words." (Which the learned judge here read).

It will be observed how extremely careful the learned judge was to give the actual evidence, and not his own version or impression of it. He then proceeded to expound the law plainly and distinctly :—

"Such, gentlemen of the grand jury, are the statements of the witnesses. And the question therefore is, Is this murder ?

"Now, with reference to this the material question in the case, I have to observe that all homicide is murder, unless there is some justification or excuse for it. The single inquiry, therefore, is, was there such in the present instance ? That will depend upon circumstances which I now proceed to consider. No doubt whatever can exist that *had the ordinary law of the land been supreme at the time* of this melancholy even if justifiable transaction, this would have been murder, and murder of the purest type. It would have been murder, because Marshall had not been sentenced to die by the judgment of a competent tribunal. *Does the prevalence of martial law then—of the temporary suspension and setting aside of the ordinary law—make any difference ? Undoubtedly it does.* The object of martial law being the suspension of insurrection and the restoration of law and order, whatever is necessary towards the attainment of that end is permitted, even to the destruction of human life. Martial law is the recurrence to physical force for the bringing about of a result beyond the scope and capabilities of the ordinary law. The ordinary law requiring,

as one of its distinguishing peculiarities, a certain amount of delay and compliance with certain forms. Unless these were for the time dispensed with, revolt would gain head, and eventually perhaps triumph. It is requisite, therefore, that it should be temporarily suspended. Acts accordingly which in other circumstances would be unlawful, are now held justified by the special exigency of the case. Cases are judged rather by their own peculiar circumstances than by reference to more than a few great leading rules and principles. Nor will the law scrutinise too minutely particular acts, if only, without violating any of the above-mentioned rules and principles, they forwarded or tended to forward the great end of martial law, the suppression of armed outbreaks. This is not the place to discuss such a question; but it is manifest, in the interest of those under its care, that every Government, whatever its form may be, must possess the power of resorting to force in the last extremity. The want of such a power would place the very existence of the State at the mercy of organised conspiracy. The public safety, therefore, which is the ultimate law, confides to the supreme authority in every country the power to declare when the emergency has arisen. But martial law—and I desire to draw your particular attention to what I am going to observe—although, as I have stated, it dispenses with the forms and delays which appertain to the ordinary criminal jurisprudence, does not therefore authorise or sanction every deed assumed to be done in its name. It stops far short of that. For, if it did not, lawless men, under colour, and putting forward the pretence of authority, might commit acts abhorrent to every principle of humanity. They might gratify malice and revenge, hatred and ill will, lust and rapacity. They might perpetrate deeds from which the sun would hide his face. No greater error exists than to suppose that the subjecting of a district to the military power authorises excess on the part of those who administer that power. Deeply is it therefore in the interest of the public welfare, and in the interest of humanity, that it should be clearly understood what martial law sanctions and what it does not. It allows, in one word, everything that is necessary towards putting down actual resistance to lawful authority. But this is not the only restraint which it imposes upon those who have the carrying of it out. It further requires that the acts of its ministers should be honest and *bonâ fide*. They must be done in good faith, or they will be disavowed. And, as a still further requisition, it fastens as a condition upon its agents that their acts shall be adjudged to be necessary in the judgment, not of a violent or excited, but of a moderate and reasonable man. Reason and common sense must approve the particular act. It is not sufficient that the party should unaffectedly believe such and such a line of conduct to be called for; the belief must be reasonably entertained, and such as a person of ordinary understanding would not repudiate. If these conditions are not fulfilled the act becomes simply unlawful, with all the consequences attaching to illegality. The moment that it ceases

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to be necessary for the suppression of armed revolt, that moment it loses its legal character. It then takes rank with those acts to which the privilege and protection of martial law are not extended. The vindictive passions are prohibited their exercise as absolutely and peremptorily during military rule as in the most orderly and tranquil condition of human affairs. Excess and wantonness, cruelty and unscrupulous contempt for human life, meet with no sanction from martial any more than from ordinary law. No amount of personal provocation will justify or excuse vindictive retaliation. Were it otherwise, an institution which, though stern, is yet beneficial, would degenerate into an instrument of mere private malice and revenge. Such, gentlemen of the grand jury, is the law applicable to the case which has furnished the subject-matter of these observations."

And then, after this admirable exposition of the law, after telling the grand jury that the Indemnity Act did not affect the question, because it could only apply in cases where the conditions thus pointed out had been fulfilled, the learned judge left the case to them thus :—

"The question, therefore, for your consideration upon the whole matter will be, has the Crown, upon the evidence which will be laid before you, established such a *prima facie* case against the defendant as to render it proper that this case should be remitted for the further inquiry which it necessarily receives at the hands of a petty jury? Upon this subject, I owe it to the administration of justice to remark that you ought not to have a doubt. *If these witnesses speak the truth*, they have told a tale which no system of criminal jurisprudence but is under a positive obligation to investigate. I need scarcely observe that, by finding a true bill, you do not pronounce the defendant guilty, but merely call upon him to say what he has to urge by way of defence or explanation."

Here it will be observed that the learned judge left the matter of fact to the grand jury, whether they were satisfied the witnesses were telling the truth, and the whole truth; and it is well settled that a jury may refuse to act upon testimony if upon their observation of the way in which it is given, or from any facts elicited in the course of examination, they see reason to distrust it, or to doubt if it discloses *all* the facts upon the matter. In this instance, no doubt, they had some reason for distrusting the testimony, for they ignored the bill, which other-

wise they must have found. And before the Royal Commissioners it had been stated that the principal witness for the prosecution had said, at the time, that the Provost-marshal's life would not have been safe if he had not had the man executed; and several witnesses had sworn that the man had threatened the Provost's life with great determination, and that the Provost had only six or seven soldiers to keep down two or three hundred prisoners, the matter occurring, it should be stated, within the first week of the insurrection, in the first excitement of the massacre, and while the active leaders were still at large urging the negroes to revolt. Under all these circumstances, perhaps, it is not to be wondered at that the Bill was thrown out. It is only fair to give the Provost-marshal's own statement of the case, supported by the oaths of several seamen who were present, and who were quite independent witnesses.

"I have the honour to state that, upon my returning from Stoney Gut, on the 18th October, prisoners were being brought into the station from every direction, and before mid-day, besides prisoners that were in tent, in charge of the military, there were upwards of 100 in the police station and yard. One man was particularly violent, and stated to be one of the worst of the rebels. The depositions taken against him are among all other papers in the possession of the authorities, I believe. He became so bad that it was necessary to flog him to keep the others quiet, and he was ordered to get two dozen. On my going to the square, my attention was called to the threatening language he was using against every one of the bystanders. On looking at him he threatened my own life. I did not know how many lashes he had received at the time, but, as the other prisoners were muttering and expressing sympathy, I ordered him to be taken down; he then shook his fist and growled at me again, saying words to the effect that he would do for me. There was no court-martial likely to sit for some days; and, considering that his remaining in the yard with other prisoners would be dangerous, I ordered him to be hanged. The prisoners increased by night to nearly 250, besides the military prisoners. The man was recognised by all as a leader among the rebels, and nearly every one considered him dangerous. I am not aware that there was any officer present at the time the man was hanged; but General Jackson, who came up a few hours after, considered I had done under the circumstances what was justifiable. I may mention that out of about eleven hundred

prisoners who passed under my charge, this only execution I had without trial ; and considering that the convicts had been a short time before liberated from the district prison, and that he was afterwards seen with them, as he stated at the time, I trust I have not acted wrongly."

It should be added, in justice to Mr. Eyre, that he never heard of the act until after martial law was over, and then he suspended the Provost-marshal, in order to an inquiry, which was interrupted by his own suspension from office.

It is to be borne in mind that the facts set forth in the above statement were notorious in the colony, and were, by reason of the publication of these documents, and the Report of the Commissioners, matters of history. The conduct of the prosecution, therefore, in keeping back these facts was such as to *insure its failure*. In sending home, however, the account of the proceedings in the above case, the Governor (Sir P. Grant) threw all the blame upon the grand jury, and he wrote thus to the Secretary of State :—

"I have the honour to transmit a correct newspaper report of the proceedings, from which your lordship will learn that the grand jury, in direct opposition to the charge of the presiding judge, ignored the bill against Gordon Duberry Ramsay, the late Provost-marshal during martial law, for the murder of George Marshall. The Attorney-General informs me that he had great difficulty in forming a jury, and had to go over the panel of jurors three times before he could get even fifteen as a grand jury, twelve at least being necessary to the finding a capital charge. The jury ultimately obtained was composed of seven white men, seven coloured men, and one black man. The Attorney-General is of opinion that no grand jury in the island will find a true bill against Mr. Ramsay, and that any further proceedings here would be useless."

The Secretary of State (the Earl of Carnarvon) wrote in answer in a similar spirit of reprobation :—

"In Mr. Justice Ker's charge the law applying to the case was clearly explained to the grand jury, the evidence to be produced against the prisoners was recapitulated in the words of the depositions, and the charge to the grand jury was closed by Mr. Ker in the following terms : 'The question, therefore, for your consideration upon the whole matter will be,

Has the Crown, upon the evidence which will be laid before you, established such a *prima facie* case against the defendant as to render it proper that the case should be remitted for the fuller inquiry which it necessarily receives at the hands of a petty jury? Upon this subject I owe it to the administration of justice to remark that you ought not to have a doubt. *If these witnesses speak the truth*, they have told a tale which no system of criminal jurisprudence but is under a positive obligation to investigate. I need scarcely observe that, by finding a true bill, you do not pronounce the defendant guilty, but merely call upon him to say what he has to urge by way of defence or explanation.'

"You inform me that the grand jury, who ignored the bill in contradiction to this charge, had been formed with care and consideration; and that the Attorney-General is of opinion that no grand jury in the island will find a true bill against Ramsay, and that consequently any further proceedings in Jamaica will be useless.

"There can be no doubt that the course of justice has been grievously defeated in this case. I have no alternative but to regard it as a refusal on the part of the grand jury to allow any judicial inquiry into charges of an unusually grave nature, which in the interests both of humanity and the public good imperatively required an impartial investigation. But the further intimation that such conduct is no other than is to be anticipated from every grand jury that can be formed in Jamaica, imparts to the case a serious significance as regards the reforms required in the system under which justice is administered. It is the duty of her Majesty's Government to consider very carefully this state of affairs; and I have to request you to furnish me at the earliest date with a full report of the practical working of the grand jury system in the colony.

"Meanwhile, under the circumstances which you have stated, and which make it clear that no other result can be anticipated from a further prosecution of Mr. Ramsay at any subsequent assizes, *and that the continuance of criminal proceedings would only tend to keep alive those feelings of irritation in the colony which it is my earnest wish to see replaced, as soon as possible, by healthier and safer objects of interest, I do not consider that it would be for the public advantage to attempt to carry this question further.*"

But it may be submitted that there were considerations entirely overlooked by the Governor and the Secretary of State, which, if present to their minds, would have materially affected their judgments upon the result of the prosecution. They unaccountably overlooked words in which the judge left to the grand jury the *credibility of the witnesses*, which was entirely for them. "*If these witnesses*

“speak the truth,” that is, if they tell you the whole truth about the matter, all the real facts of the case as it occurred. Whether they did so, would depend, not merely on their veracity, as stating truly what *they* saw or heard, but upon the manner in which they had been chosen or selected, *and whether they really did witness or hear all that had occurred.* It was notorious in the colony, it was made matter of history by the Report of the Commissioners, that *they did not*, and that there were other witnesses, who had been examined before the Commissioners, who *heard more of the matter, and heard the unfortunate man threaten the Provost-marshal’s life.* It might be that even if these witnesses had been produced and examined, the grand jury might, upon the whole evidence, have found a bill, because then *they might have done so fairly.* But as the prosecution was conducted, *they could not have fairly found the bill,* and it would have been most unfair to do so. For either these witnesses were in the colony, and were kept back by the Attorney-General, in which case the grand jury might well reject a prosecution so unfairly presented to them, or the witnesses, who were *seamen in the service of the Crown,* had left the colony; in which case the injustice to the accused, and the unfairness on the part of the prosecution, would actually have been greater, for the prosecution would have waited until the most important witnesses in the case had left the colony before preferring a charge of murder against an officer who had acted on a trying occasion in suppression of a rebellion. It is strange that these considerations should not have occurred to the Governor and the Secretary of State; if they had, they surely would never have blamed a grand jury for declining to make themselves the instruments of such monstrous injustice.

The real moral to be drawn from the failure of the prosecution was one which unhappily was *not* drawn—the futility of attempts to bolster up criminal prosecutions in such cases upon a *partial and one-sided view of the facts.*

But the spirit in which the failure of the prosecutions was commented upon was the same spirit as that in which they had been conducted—a narrow, prejudiced, one-sided spirit. From an elaborate minute of the attorney employed by the Governor to draw up the evidence and prosecute the charges in the cases of civilians charged with excess, it appears that though in two cases the charges were apparently proved, in others, and especially in that very case of Woodrow expressly mentioned by the Attorney-General as one of the best proved cases, the evidence was contradictory and readily broke down; and it is not possible to say that others may not have equally broken down before the grand jury. In several cases it plainly appeared that the charges were false. The following are specimens:—

“Against John Woodrow, for flogging Fanny Taylor with a cat (see certified copy depositions herewith). Notwithstanding the evidence, which clearly proved that the defendant had ordered the flogging, he positively denied it before the justices, and referred to the complainant's evidence before the Royal Commission (see page 977), where *she had sworn that the flogging had been ordered by James Gordon*. The case was, however, sent up for trial.

“Against David Winton, for shooting William Cargill (see certified copy depositions herewith), which are very full and complete, and although Mr. Justice Ewart sent the case for trial, I did not think that it was made out against the prisoner, but *that, on the contrary, it had been clearly shown that Cargill had been shot by the Maroons*.”

Perhaps had the Secretary of State been able to peruse the voluminous depositions more carefully, he would have seen other reasons for the course taken by the grand jury than those he thought himself at liberty to suggest. In one of the above cases—the one last mentioned—he admitted that the case had broken down; and if he had examined the other he would have seen that it had equally broken down. He appears, however, to have ascribed all these failures to improper feeling on the part of the grand jury, who, nevertheless, even in the cases which were apparently proved, may have thought the prosecutions

oppressive under all the circumstances of danger and excitement under which they had occurred, and may have seen reasons *not* apparent for distrusting the witnesses. The Secretary of State wrote thus :—

“I have received your despatch, No. 34, of the 24th October, on the subject of the indictments for assaults preferred against certain civilians accused of grave offences committed during martial law. The presentment of the grand jury in the case of Ramsay (on which I have addressed you in another despatch of this date) and in the case of Woodrow, tend to show that there would be a failure of justice in all similar cases tried in Jamaica, and, for the reasons explained in my other despatch, it is not my intention to take any steps for causing indictments to be preferred in this country.” (Despatch of Lord Carnarvon, Nov. 16, 1866.)

And again :—

“I have read your despatch of the 24th December, and the depositions taken in the cases of the persons named in the margin (those above alluded to), with the deepest regret, both at the unwarranted acts of cruelty which, upon the face of the depositions, appear to have been committed by some of the parties accused, and at the evidence which those papers contain of the political prepossessions by which unhappily the grand jurors have allowed their minds to be influenced in the discharge of their judicial duties. I feel myself, however, unable to require those measures to be adopted which, under ordinary circumstances, I should have unhesitatingly directed with a view to the adequate punishment of persons chargeable with signal inhumanity. You will have learnt from my despatch of the 16th November last, that I regard the failure of justice in the case of G. D. Ramsay as a refusal on the part of the grand jury to allow any judicial inquiry into charges of an unusually grave nature, which in the interests both of humanity and the public good required an impartial investigation. There is nothing in your despatch of the 24th December to give me any hope that a better feeling exists in the minds of that class of persons from whom a grand jury would be selected, and I feel myself therefore still precluded from instructing you to take any further steps in the prosecution of these accused persons. At the same time, if the local feeling has undergone any change, or if anything has occurred which in your judgment makes it more probable that a fair and impartial investigation could be obtained in the cases of these persons, you are of course at liberty to proceed. I will only add upon this point that, in my opinion, the case against David Winton broke down, and that unless further evidence has been obtained against the accused, that charge should not be pressed.” (Despatch, Jan. 31, 1867.)

It is not, however, to be supposed that all who were

guilty of excesses escaped. The Provost-marshal lost his office; he had been suspended by Mr. Eyre, and was not restored; and another person, a magistrate, not only lost his commission, but also a valuable office. If other and more severe examples were not made, it was entirely owing to those who, abstaining from prosecuting the actual perpetrators of the atrocities and excesses, the most of them being private soldiers, and *black* soldiers, insisted upon prosecuting superior authorities who had sanctioned no excesses, the only exception being the prosecution of the Provost-marshal, which failed through the unfair and one-sided way in which it was conducted.

It will have been observed that the Secretary of State had concluded one of the despatches upon the subject in these wise and statesmanlike words:—

“Under circumstances which make it clear that the continuance of criminal proceedings would only tend to keep alive those feelings of irritation in the colony which it is my earnest wish to see replaced, as soon as possible, by healthier and safer objects of interest, I do not consider that it would be for the public advantage to attempt to carry this question further.” (Despatch of Lord Carnarvon.)

What the objects of interest were to which, rather than to criminal prosecutions, the Secretary of State desired to direct public attention, he explained in a masterly despatch, which exhibited the condition of the colony, and especially of the negro population, very much as it had been represented by former colonial ministers, such as Earl Grey, or former governors, such as Mr. Eyre, the result being that there had been a great deterioration in the condition of the negroes since emancipation; that the land question, then left unsettled and unprovided for, caused great difficulty; that the great cause of discontent was not distress, but idleness; and that every effort was necessary, by wise and impartial administration, to prevent the contests of class and of race, which must otherwise ensue from such a condition of affairs. The Secretary of State wrote:—

"The great difficulty in Jamaica is not to secure, under ordinary circumstances, the physical well-being of the peasantry, such, that is, as they themselves are content to rest in, and would not think it worth much effort to improve. The conditions under which they live are such that, with a very moderate degree of industry and prudence, they would have it in their power not only to secure an ample subsistence in ordinary seasons, but also to make provision against seasons of scarcity. Our object should be, therefore, to promote habits of industry and foresight. * * * It would seem that, to a great extent, the religious observances of the negro are as yet either superficial or superstitious, and do not carry with them a corresponding moral discipline. * * * Under ordinary circumstances, very heinous crimes are said to be rare among the negroes; but petty larcenies and assaults are very numerous. * * * *An undoubted change has taken place during the last 20 or 30 years.* From causes into which I need not now enter, the relations of the minister and his congregation have been modified, if not in some degree reversed; the former becoming more dependent on the contributions of the latter, and the latter consequently *less open to the influence of his teaching.* * * * There are two main divisions of the negro population in Jamaica: the one consisting of labourers working on plantations and estates, and living on or near them, with one, two, or more acres of land, rented or possessed, on which they or their families grow provisions; the other cultivators of the soil, who work for wages only rarely or not at all, and who subsist on their own small freeholds, or are squatters on abandoned estates or on Crown lands.

"The former class is generally more within reach of the church and the school, and the influences of civilised life, and is said to be more orderly, manageable, and contented. The latter, occupying often remote or isolated situations, and exercising a somewhat barbarous independence, are those from whom more directly and principally danger proceeded or was apprehended during the disturbances of October, 1865."

Considering that some thousands of them actually engaged in a bloody rebellion, commenced by a cruel massacre, and that the rebellion, according to the Report of the Commissioners, was spreading with singular rapidity among them, over a vast tract of country, it must be admitted that, to say the least, this language was singularly moderate, or rather, guarded. If this language represented the idea the Secretary of State had entertained of the case, it would account for his acquiescence in the recall of the Governor, and it, any how, underrated the strength of the influence exerted in support of that view that the Secretary

of State did hesitate to assert it was even a case of *danger*, but should have cautiously inserted the hypothetical words, "or *apprehended*," and should have shrunk moreover from using the word "rebellion," and should have carefully used the word "disturbances," the sort of phrase one applies to a little local riot! However, he fully appreciated the difficulties of the question how to deal with this semi-barbarous population :—

"The subject of land and squatting in Jamaica is beset with even more difficulties than attend it in some colonies. For the civilisation, improvement, and good order of the population, it is most desirable that it should not be scattered in isolated groups, apart from the influences and obligations of social life. It is desirable also that respect for property should be enforced ; but we must be careful not to engage in a struggle for those objects in which nature and circumstances are so far against us as to ensure our defeat. * * * The misfortune of the negroes is that, having but few wants, and those such as nature supplies from her abundance, almost unsolicited, they have no need to be industrious, so that they frequently sink into almost absolute barbarism. And what are the fruits of idleness and ignorance in a people of an excitable temperament and childish credulity, may be seen in the descriptions given even by ministers of various denominations of the 'Revivals' during the last few years, of the folly and frenzy, and often the profligacy, by which they are attended, and of the utter demoralisation which followed, leading to the abandonment of even the little labour previously performed, and the resort to habitual wholesale plunder as a means of subsistence." (Despatch of Earl of Carnarvon, August 1st, 1866.)

It was a rebellion of this race, a rebellion which was spreading with singular rapidity among 450,000 of them, and which was a war of extermination against a few thousands of whites,—it was with such a danger Mr. Eyre had had to deal.

"Under ordinary and favourable circumstances, the relations of races so opposed to each other, in many respects, as the white and negro population of Jamaica, are beset with difficulties ; but, after the events of the last twelve months, the feeling of personal wrong and class triumph must of necessity exist for some time to come. In no way will these feelings of irritation be so soon composed as by an absolute impartiality of language and conduct, and by a conviction on the part of all races and parties that they have to

look for strict justice at the hands of the Queen's representative, whilst you will always be entitled to count upon the ready and full support of her Majesty's Government to maintain the peace and order of the island. Her Majesty's Government have also a right to expect in those to whose charge such great trusts are committed, that, in times of political emergency, they will show themselves *able to withstand the pressure of any one class or interest*, and that they will *maintain the calmness and impartiality of judgment* which should belong to the Governor of an English colony."

No one will refuse his assent to this admirable sentiment, and no one would deny that it was infinitely *more* applicable to the Imperial Government than to a local Governor, and that the Government at home should show themselves able to withstand the pressure of any one class or idea, or interest, and that it should maintain a calmness and impartiality of judgment which should belong to the Imperial Government. That the Government at home had, in this matter, been subject to the "pressure," not only of *one* class or idea, extremely powerful and influential, but of several, all from peculiar circumstances, and in a great degree from that very condition of the colony, and that exceptional and unhappy antagonism of race, and animosity of class, to which the Secretary of State alluded, adverse to the unfortunate Governor, is beyond a doubt. Whether the Government showed itself entirely able to withstand the pressure put upon it may be more doubtful. Of the fact of the *pressure* there can be no doubt, nor of the result; the recall and condemnation of the Governor, who was obnoxious to the party, or combination of parties, exciting this pressure. The Secretary of State had pressed upon the new Governor the *remission* of sentences imposed by regular courts upon insurgents convicted of murderous offences; and he pressed with the whole weight of the power of Government prosecutions against those engaged in the *suppression* of the rebellion and the repression of these outrages. The Governor who had only *allowed* the measures he deemed necessary, but who was obnoxious to the party alluded to,

was recalled, and the military commanders, under whose authority they were carried out, were not even censured, *not being* so obnoxious to that party. These were things which showed that the Government had not been able to withstand the pressure of a particular class or idea, and that class or idea had, up to this point, certainly carried their object entirely.

However, the Government were, at all events, of opinion that there ought to be no more prosecutions, either in Jamaica or here. The Secretary of State, as already mentioned, had concluded one of the despatches upon the subject in these wise and statesmanlike words :—

“Under circumstances which make it clear that the continuance of criminal proceedings would only tend to keep alive those feelings of irritation in the colony which *it is my earnest wish to see replaced, as soon as possible, by healthier and safer objects of interest, I do not consider that it would be for the public advantage to attempt to carry this question further.*”

And in another despatch the Secretary of State explained that he meant by this, that there ought to be no further prosecutions *in this country*—

“It is not my intention to take any steps for causing indictments to be preferred in this country.”

That is to say, even against the actual perpetrators of alleged excesses or atrocities, some of whom being in the service of the Crown were under its control, and could be sent home to be tried here. Of course, therefore, it was plainly implied in this that it was not the view of the Government that prosecutions should be instituted in this country against the Governor or military commander, neither of whom had *personally* any responsibility for the alleged excesses, and, on the contrary, both of whom had issued directions or suggestions against any such excesses. This it was manifest had been the view of the House of Commons, who declined to enter into the question of liability for the excesses, or to concur in any resolution

directed against the Governor, or any one in particular; and, if persons in so high a position were deserving of prosecution at all for acts done in the exercise of their high office, it is manifest that the prosecutions ought to be instituted by the Government. The Government, however, and the House of Commons, thought that, under all the circumstances, and after the lapse of more than a year from the events in question, there ought to be no further attempts at criminal prosecutions, even as against those who had been the actual perpetrators of alleged atrocities or excesses. And, *à multo fortiori*, the Government and the House of Commons had evidently been of opinion that there ought to be no prosecutions against the Governor or military commander, who had never sanctioned any excesses. Nevertheless, that powerful party, whose influence had, by the means already described, obtained the recall of the Governor, were resolved to do all that in them lay to make him amenable to criminal prosecution, especially in this case, which, as already mentioned, had, for reasons extremely natural, aroused the highest degree of animosity against him—the case of Gordon, who had been arrested under his orders, and tried in accordance with his wishes, and executed with his sanction, as the author of the rebellion.

These prosecutions were conducted throughout in the spirit which had characterised the whole of the proceedings of the promoters, and were inspired by a view entirely *one-sided*. They had from the first so firmly fastened their minds upon one side of it, that they seemed now almost to have lost the capacity of looking at any other. Their mental vision had by this time become so obscured or perverted by partisan feeling that they really saw but one side. This had arisen, in the first instance, from the strong impulse given to their feelings by the spirit engendered in the recent controversy between the late Governor and a powerful party, and, above all, in the

shock given to their minds by the news of the summary trial and execution of Gordon, whom many of them regarded as one of their own class, and who, indeed, to some among them was not unknown as a personal acquaintance or friend. It was perfectly natural that, under such circumstances, they should be inspired by feelings of rancorous animosity towards the unfortunate ex-Governor, and that they should persist in pursuing him with a tenacity which some called malignant, but which perhaps might be more properly termed narrow-minded. Their minds were not large enough to take in more than one side of the subject, and looking at that side only, no doubt there was enough to inflame and excite them. Prevented by their partisan feeling from appreciating the terrible dangers of a negro insurrection, they of course thought the measures of severity excessive, and constantly brooding over the latter, they became influenced to a degree that was almost morbid. They had so long persisted in representing to themselves the conduct of Mr. Eyre in a light in which it necessarily appeared cruel or unfeeling, they came at last to think him hateful, and thinking him hateful, they necessarily came to hate him. Thus it is that men's minds become perverted by mistaken, narrow, and one-sided notions, until their feelings degenerate into hatred, and they persuade themselves they are fulfilling a duty when they are only cherishing an animosity, or satiating their hate. They disclaimed, no doubt sincerely, personal animosity, but their conduct betrayed it too clearly. For, not content with instituting criminal prosecutions against him, they assailed him with the most violent abuse, and unceasingly aimed at him the most envenomed accusations, in public speaking, and in the press, and on every possible occasion. As this was contrary to usage and to justice, it could only be accounted for by one or both of two reasons—that they sought thus to prejudice juries and magistrates against him, or that

they made the prosecutions the occasion for covering him with abuse. One thing is matter of history, that having, as appeared from their own publications, intended from the first to institute criminal proceedings against the Governor in Gordon's case, they had, from the first, and during the whole of the intermediate period, assailed him without ceasing, in the most envenomed and most violent manner, in publications and in public speeches, in a way which they must have known, and therefore must have intended, greatly to inflame public opinion against him ; that is to say, to prevent him from having a fair trial. In other words, while professing to appeal to justice, they had sedulously sought to pervert the course of justice, and all the excuses they gave for this conduct on their part were confused and self-contradictory.

They professed to desire to establish the illegality of martial law, and they set about it by instituting criminal proceedings for alleged *abuse* of it. The whole case as regards Gordon's trial and execution was, that it was an oppressive and abusive exercise of power ; and if so, they must have well known that the conviction of all persons concerned in it would have left the legality of martial law quite unaffected. On the other hand, they very well knew, or ought to have known, that even if martial law were illegal, no criminal charge could be established, if the exercise of it had been honest, on the occasion of a great *public* emergency. Their prosecutions, therefore, could not answer any purpose but that of vengeance ; and their constant abuse of the Governor, as it could not have been inspired by any desire for *justice*, must be ascribed to the natural, but not laudable, rancour of revenge. In a word, they hated the man who had, as they considered, caused Gordon's execution, and they were resolved to have vengeance for it. This, and this alone, explains the course they pursued with such persistency and animosity against him.

It has been seen what was the view taken of the case in the House of Commons, it is proper here to notice, what perhaps ought to have been adverted to before, the view taken of it in the House of Lords. This may probably be, however, on the whole, the most convenient place in which to mention it, because a speech now made by the new Secretary of State (the Earl of Carnarvon), affords a fitting opportunity for presenting the substance of some previous discussion on the subject, which had taken place in that august assembly. In the speech from the throne, there was a passage alluding to the appointment of the Commission, and in the debate on the address, the Earl of Derby made some observations upon it. He said:—

“Unfortunately a portion of the press has taken upon itself to prejudice the question, in the absence of all information, or with very imperfect and inadequate information. I am not pretending to say whether Mr. Eyre was justified in the measures of severity—undoubtedly, of *great severity*—which he felt called upon to carry out, but this I will say, that Mr. Eyre’s previous character* does not lead one to suppose that he would lose his head from sudden infirmity; and, if there be one point more prominent in his character than another, it is, that in all cases where there was a mixture of races—he stood forward as the advocate and protector of the inferior race. It is unlikely that a man of this description and character, who has had experience of colonial life, should have been so entirely misled as, without foundation, to believe that a dangerous rebellion was organised over the whole of the colony,† which broke out prematurely in one district, and which, by the admission of the Secretary for the Colonies,‡ was put a stop to by the vigour with which the authorities acted in Jamaica, when no such rebellion in reality existed. *The whole question of Governor Eyre’s conduct will turn upon what was really the state of the colony.* Was there in reality fair ground for the belief|| that a rebellion was about to break out,

* Very well portrayed in his interesting “Life,” by Mr. Hamilton Hume, one of the most pleasing pieces of biography ever published.

† Or a local rebellion, the result of a conspiracy, certain to spread, and to become universal if successful; which was in effect what the Commissioners found, and it was of course as dangerous as a conspiracy more general.

‡ Mr. Cardwell, after reading the copious despatch of Mr. Eyre, and its numerous and voluminous enclosures, had thanked him for the suppression of the rebellion, and always adhered to that view.

|| It is remarkable how this gifted statesman here hit the true point of the case, as it was afterwards put by Mr. Justice Blackburn.

when vigorous measures would be measures of real mercy, though attended with great loss of life? Upon that I pronounce no opinion.

"The Government ought, however, to have received despatches from Mr. Eyre from time to time with respect to the state of the island; he must have told them what he apprehended, and what was the opinion of the white population. We know, indeed, that the whole white population were unanimous in the belief that by his measures Mr. Eyre saved the colony. They may have been all wrong. I do not say they were not, and I want to receive the fullest information. But, with respect to the course pursued by the Government, I am competent to form an opinion, and I do not think that it has been either just or generous to the Governor of Jamaica. The position of the Governor has been one of serious responsibility and great danger, and at the moment when he believed that he had rendered great services to the country he has been suspended from his functions without reason assigned. Such a course—a course which prejudged and degraded a public servant without trial—would never have been adopted had Lord Palmerston lived.* He said on one occasion:— 'It is not enough to support the representative of the Crown when we are satisfied that he is right. Even if we believe that he took an unwise course, we will not desert him, so long as we are satisfied that he acted honestly and with a conscientious desire to do his duty to the country.† The moment your policy takes a different direction you cease to deserve the confidence of honourable men. You may get people to serve you, and, doubtless, you will, but they will not be high-minded English gentlemen, such as it is necessary to have at the head of affairs in the great colonies and dependencies of this country.'

"I am far from denying that the statements which were received—imperfect though they were—did render it the duty of the Government to call on Governor Eyre for an explanation on these points, in respect of which it appeared that he had exceeded the law; but I do say that to supersede a Governor (I am sorry to say, I am afraid, *contrary to the original intention of the Government*),‡ to supersede Mr. Eyre, and subject him to the examination and control of a new Governor and two other Commissioners, degrading him in the eyes of the blacks, who would naturally be led to believe that they had attained a signal triumph over him, while the whites would be under the impression that everything was being done in favour of the negro; it was a step neither just to Governor Eyre nor likely to be otherwise than most unfortunate in its effects upon the minds of both parts of the population." (Hansard's Debates, vol. 181, p. 93.)

* That illustrious and lamented statesman had lately been removed by death.

† These generous sentiments are entirely in accordance with the language of Lord Russell, in the Ceylon case (*vide* Introduction), and also with the language of great judges, as Lord Mansfield.

‡ This was manifestly the case, *vide ante*.

These apprehensions, it will have been seen, were amply realised, for it has been shown that the blacks were rendered so audacious, that again and again they were on the point of breaking out into rebellion, and were only deterred by the display of military force, and probably the salutary recollections of the terror of martial law. The noble earl having thus, in a spirit of wise and sagacious statesmanship, questioned the policy of the Commission, went on to question its constitutional legality—a matter of grave doubt* :—

“I presume the noble earl (Russell) at the head of the Government has taken the opinion of the law officers of the Crown as to the legality of the Commission; for, unless I have their opinion against mine, I should have great doubts as to that legality. I do not of course question the power of the Government to make any inquiries they please in the colony, *but have you not been sending out a roving commission to pick up evidence against him, which might be used when, if that which is urged against him by those who take a fanatical view of his conduct be true, he came to be placed on his trial on a capital charge?* Upon this point the Government have, in my opinion, taken a grave responsibility upon themselves in the course they have adopted.” (Hansard's Debates, vol. 181, p. 94.)

No impartial person will question this opinion, presuming the Government were aware of the intention to prosecute the Governor or the officers, when they appointed the Commission; as to which the noble lord at the head of the Government, (Earl Russell,) *preserved a remarkable silence*. There is a certainty that the Government were aware of it before the Commissioners left this country, for it was publicly stated in a journal which was the organ of the prosecutors, and it was commented upon in a legal journal,† and the Jamaica Committee, as they were called, shortly after the Commission was appointed, published an elaborate opinion obtained from counsel, in order to show that Mr. Eyre was liable to criminal prosecution, and also published their instructions to the counsel they had

* This question was discussed by the Author in his “Treatise on Martial Law.” Inquiry would be legal, but not with a view to prosecution.

† The Jurist.

sent out to Jamaica to attend the Commissioners, in order to watch the inquiry, and see what evidence could be obtained to support the prosecutions.* So that the Government of Lord Russell certainly allowed a commission to be *used*, even if they did not issue it, in order that it might be used against the Governor of a colony, and the officers who had saved it from a formidable rebellion, with a view to their criminal prosecution.† It may be safely stated that this was a proceeding *perfectly unparalleled*, and it may be gravely doubted whether it was not unconstitutional if not illegal. For every one knows it is illegal to attempt to extort self-criminatory evidence in support of criminal prosecutions, and every one must see that under such circumstances a commission of inquiry into the conduct of *officers of the Crown* was virtually compulsory, as they would scarcely refuse to answer. However, it will have been observed that the Government of Lord Russell had not, so far as appeared, contemplated nor consented to any prosecution of the Governor or military commander, and declared *against* such prosecutions, apparently with the entire assent of Parliament. And upon the occasion now alluded to, the debate on the address, the noble earl (Russell) then at the head of the Government, thus vindicated the course they had pursued in appointing the Commission :—

“The question for the consideration of the Government was whether Governor Eyre was right in adopting the means he did to repress the rebellion.‡ It is one thing to support an officer who may have com-

* See the papers published by the Jamaica Committee.

† Mr. Cardwell, in a despatch to the President of the Royal Commission, indicated that a caution should be given to them that they were not bound to criminate themselves, but how could the officers of the Crown refuse to answer Royal Commissioners, and how could men of honour, who were conscious of no intentional wrong, decline to answer?

‡ If this meant whether he was right (a) in declaring martial law, or, (b) in leaving its control and execution to military authority; these were questions of law, on which the law officers of the Crown, on the undoubted facts, could pronounce an opinion; and no inquiry was necessary. If it meant whether he would be censurable for excesses,

mitted some error of judgment, but when it comes to a question of the lives of 500 of the Queen's subjects, I do not think it right for us to say 'We do not care whether 500 persons have been put to death without necessity; but we will support the Governor whether he was right or wrong, and we care nothing about those persons' lives because they happen to be black. That then being the question before us, we determined that inquiry should be made.* There was then the question whether the inquiry

although he was right in leaving it to military authority, *that* again was a question of law, and one which must obviously be settled in the negative. If it meant whether he was right in continuing martial law, that was a pure question of judgment, which, according to Lord Russell's own view in the Ceylon case, would not be any ground of censure, even if the Governor was wrong. On no possible ground, therefore, was there any reason for the inquiry, except to quell a violent and unscrupulous agitation.

* It had not always been the opinion of Lord Russell that a commission ought to be appointed in such a case, for when it was proposed in 1849, in the Ceylon case, he said:—"Lord J. Russell *was of opinion that, in so far as it concerned the good government of our dependencies, it was a very serious question whether a commission should be appointed to inquire into the conduct of the executive officers at the head of one of those dependencies.* It appeared to him that commissions might be appointed, and had been appointed from time to time, to inquire into the state of our colonies, their general administration, and likewise their finances, and to get such information as might enable Parliament to legislate. But an inquiry into the means taken for the suppression of an insurrection appeared to him as calculated to weaken and impair the authority of any person exercising the functions of government. He did not see how it was possible for any person to go on conducting the affairs of a colony with a grand inquisitor in that colony collecting all complaints, and taking the evidence of every person who might have any charge to make against him with regard to an insurrection which, like most other insurrections, had not been suppressed without the exercise of force, and the application of those measures of coercion which it was usual and necessary to resort to under such circumstances. There was an insurrection in Canada some years ago, which was put down by Sir J. Colborne, who was rewarded with the highest honours the Crown could bestow. Had they sent out a commission of inquiry into the means taken by Sir J. Colborne to put down the insurrection, his legitimate authority as governor of the colony must have ceased. Therefore, he said, that although it might be perfectly right to appoint a commission to inquire into the affairs of a colony generally, a commission to inquire and take evidence on the spot as to how a governor had conducted himself in putting down an insurrection, would not only be most unjust to him, but also most injurious to the colony itself, as destroying the influence and authority of the Government." (Debate on Ceylon, 1851.)

And on that occasion the noble lord challenged the accusers of the Governor to impeach him, a course which would throw upon them the burden of bringing forward and maintaining the charges they made against him, and he would not assent to an inquisitorial inquiry. "He said:—He must, for the reasons he had stated, and for the sake of the good government of our colonial empire generally, resist the proposition. If, however, the hon. member (Mr. Hume) would come forward next Session in an open and manly manner, and move for a select committee *in order to lay on the table of the House articles of impeachment* against Lord Torrington, he (Lord J. Russell) would be prepared to meet him; *but he could not consent to a commission which would effectually destroy the authority of the Governor of the colony, without being attended with any particular result.*"

It had not then occurred to Lord Russell to get rid of the objection by *suspending*

should be instituted with Governor Eyre at the head of the Government. There was this obvious objection, that the Governor could not maintain his authority when it was shaken every day, if the inquiry proceeded. There was also this obvious objection, that if Governor Eyre retained his authority no one would have believed that there could have been a fair inquiry, or that the truth would be permitted to be told when the person accused retained his high office.* While, too, an apparent stigma was cast upon Governor Eyre he would be liable to the imputation of suppressing the evidence and not allowing it to go fairly before the public.† For these reasons it was determined that the head of the Commission should be the supreme Governor of the island, and we could not have chosen a man of higher honour than Sir H. Storks, or one more fitted to inspire respect.‡ And we have associated with him two persons than whom none are more likely to take a correct view of the law of the case.||

It will have been observed that in the brief observations of Earl Russell, he put the question in this form: that the Governor was not to be supported—in a case in which 500 persons had been sacrificed—merely because they were blacks. No one had ever entertained such a notion; but that the noble earl should have made the observation betrayed the presence in his own mind of a fallacy which had pervaded the whole agitation against the Governor, and proved fatal to a fair and just consideration of the case. The observation that measures of terrible severity (as they were truly called by the Governor) should not be condemned merely because the persons who have suffered happened to be blacks—was one of those apparent truisms which embody dangerous fallacies. Indeed, when a man puts forward a manifest truism, the presence of a fallacy

the Governor. Mr. Bright was inconsistent. He pressed for a commission against Lord Torrington, and he pressed for one against Mr. Eyre. In the former case he had *not* a majority adequate to enforce his demand. In the latter case he had, and Lord Russell found himself under a political necessity to yield.

* No one can fancy that any one could have said this but the most outrageous partisan.

† How on earth could he have controlled an independent Commission? No one can doubt that the real reason the inquiry was pressed for was to get a pretext for the suspension.

‡ No doubt, and therefore it was to be lamented that his judgment was neutralised by a majority of lawyers.

|| On the contrary, knowing nothing of martial law, or military law, having had no previous acquaintance with it, and being, as common lawyers, prejudiced against it, they would be certain to take an incorrect view of it, as they did.

may be suspected, seeing that it may be naturally inferred that the person uttering a truism means it in some sense different from that which the words appear to bear, and involving something so fallacious that he instinctively seeks to cloak and disguise it under the form of a truism, and thus enable it to pass current under a false guise; were it presented in its own proper form, it would be at once scouted and rejected as a manifest and flagrant fallacy. This was eminently the case with the observation of the noble earl, which embodied the *staple* of the whole agitation of the Jamaica Committee, and involved their favourite and most fatal fallacy. In the sense in which the noble earl may have uttered it no doubt it was perfectly true; measures of severity are not to be justified merely because it is blacks who are the sufferers from such measures. That is, not on account of any dislike or prejudice to their colour or race. But if it implied, as it popularly would be understood to imply, that their race and colour formed no ingredient in the case; then it involved a fallacy, fatal to anything like a fair and just consideration of the case. For the fact that the insurgents in a colonial rebellion are of a particular race—be it black, yellow, red, or brown—alien from the English, and animated against them by feelings of hatred and jealousy, and are, moreover, in numbers in an overwhelming majority, is a *tremendous* fact in the case; as the governing fact in it is the fact on which the whole case depends: for it must form the main element of danger, and the necessity of measures of severity must entirely depend upon the degree of the danger. A rebellion, in such a case, must be one of infinitely greater danger than any rebellion of men of “British race” could possibly be: for there is happily no class of our fellow-countrymen, on the one hand in such an overwhelming majority, and on the other hand, animated by such hatred and animosity towards some other class, as

may happen to be the case in a rebellion of men of another race. Accordingly this element in the case had not been lost sight of by the Commissioners nor the Secretary of State, and had been admitted to be most material, though he had failed to give much practical effect to it. Lord Russell, more consistent, but obviously less comprehensive in his view, betrayed in the above observation, left as it was quite unqualified, that he had given no regard to the elements of race and colour; upon which, in fact, the whole case turned. For no one would imagine that such measures of severity could ever be necessary, except in a negro colony, in which the negroes were numbered by myriads, and the whites were a few thousands. Such, however, were the views taken upon the subject by the two leading statesmen of the day. Such were the views upon which Lord Derby questioned the appointment of the Commission, and such the views upon which it was vindicated by Lord Russell.

It has been seen that the Government of Lord Russell had adopted the Report of the Commissioners, and while they recalled the Governor, declined to prosecute him. It has also been seen that in substance this view was approved of by the House of Commons. It remains to show that it was equally approved of in the House of Lords. A change of Government had taken place, and Lord Derby was at the head of affairs, and Lord Carnarvon was Secretary for the Colonies. The latter noble lord, being asked in his place in the House of Lords whether he intended to adhere to the conclusions of the Report, or what course the Government proposed to pursue, he replied in the following clear and explicit speech, which appeared quite to satisfy their lordships, as scarcely any further discussion took place upon the subject. It was, it is to be observed, *subsequent* to the debate in the House of Commons already noticed. Lord Carnarvon said, quite adopting Mr. Cardwell's view:—

"No man who has looked into the circumstances of the case, can doubt the very grave necessity which rested upon those in authority to adopt the most vigorous measures to repress the disorders.* On the other hand it is equally clear that there have been a few cases of undoubted cruelty, some cases of undoubted oppression, and some of undoubted cruelty. At the same time it is difficult to form an accurate judgment at this distance, and with the comparatively insufficient materials which are before us. Because, bulky as is the report of the Commissioners, the evidence is such that it is exceedingly difficult for us, here, at home, to deal with it, or to know how, fairly and equally, to apportion the blame among those to whom blame is due. In the first place the evidence is of a very conflicting character. Making all possible allowance for exaggeration and misconception, there has been undoubtedly a great deal of hard swearing, and a great deal of perjury. I quite agree with my predecessor (Mr. Cardwell) that the heart-burnings, the irritation, and the angry feelings consequent upon what has taken place, ought, for the sake of the colony, to be as soon as possible put an end to. At the same time there is no doubt that great injustice has been done, and that in many cases blame appears to be due to those who encouraged it. There are three classes of persons to whom that blame is due. First the naval officers, next the military officers, and lastly the civilians. With regard to the naval officers, speaking generally, I should say that the amount of excesses chargeable to them is less than as affects the other two classes. At the same time there are some cases in connection with that service as to which I believe they are under the consideration of the Admiralty.† With regard to the military officers, the case is somewhat different. The number of cases in which they were concerned is larger, the charges against them are of a more serious character, and at this moment measures are being taken respecting some of them."

The noble earl here referred to the prosecution by court-martial directed against certain officers, which resulted in their *acquittal*. He did not explain how it was that as regards the *black soldiers*, specified by the Commissioners as having slain many of the negroes without orders and in the absence of their officers, no prosecutions were attempted, though they were clear cases of undoubted murder, and although the greater number of the worst excesses were of this class. Nor has any explanation ever

* The prodigious force of the influence exerted on the mind of the Secretary of State by the power of the abolitionist party may be estimated by his cautious use of this word, and avoidance of the word rebellion. Yet Mr. Cardwell said that forty miles of the country were for some days in possession of the insurgents. *Vide ante*.

† The result was the memorandum already quoted, *vide ante*.

been afforded of this most remarkable fact, which clearly shows that it was not the claims of humanity, nor aversion to martial law, nor horror at excesses, which had inspired the agitation and the combination against the unhappy Governor and military commander, but only animosity against those who were concerned in the execution of a particular person—Gordon—the *associate* of the most active of the prosecutors, in a course of mischievous agitation.

The noble earl gave this exposition of his views as to the province and function of the Commission :—

“As to the Commission, I take it that it stands in this position : that it was not a court of justice to *try* these persons* or pronounce any verdict or judgment upon them. So far as I understand, it was in the nature of a grand jury† to see whether there were grounds for any further investigation. That I take it is the position in which the Commissioners stood, as a tribunal. Now the Commissioners mention several cases, and it is impossible to read many of these without feeling the deepest pain and regret. I think that the letters to which some of the officers put their names were indecent, and absolutely disgusting. But the Commissioners only mentioned three individuals by name.”

The noble earl alluded to the case of the Provost-marshal and of the two officers who were tried by court-martial and acquitted. It may be observed that it had escaped the attention of the noble earl that the Commissioners had very distinctly mentioned the case of the black soldier who shot ten negroes, and added that there was reason to believe he could be identified. And they also mentioned several other instances of similar character ; cases of murder by soldiers—usually black soldiers—without orders

* No doubt. As the Author showed in his Treatise, it was a mere commission of inquiry. But a commission of inquiry with a view to criminal prosecution is undoubtedly illegal.

† This no doubt was the notion of the *function actually exercised by the Commissioners*, and therefore it is conceived—according to Lord Derby's view—*illegally* exercised. For it is a principle of the common law, that a grand jury must be local, and therefore able to understand the local exigencies of a case such as this. And to supersede the local grand juries by a Commission from the Crown, to act as an inquisition, with a view to criminal prosecution, would be as utterly illegal as any act ever done by the most arbitrary governments.

and in the absence of their officers. And it appeared from the report that most of the excesses were of this character. But it did not appear that there had been any attempt to discover and prosecute these murderers; nor that there had been any desire on the part of the assailants of the Governor and the military commander that they should be discovered and prosecuted. Nor did the noble earl offer any explanation of this, nor make any allusion to the only persons really guilty; the actual perpetrators of unauthorised acts of homicide, of which acts most of the excesses consisted. It is shown that the great object of the promoters of prosecution was to inflict punishment upon the Governor and the military commander, especially the former; and as he had not personally interfered in any case, and had only *declined* to interfere in one, that of Gordon—which was the only case in which they had been at all connected, and that was the only case selected for the prosecution which ensued,—the inference is irresistible, and it is strange that it should not have occurred to the noble earl, that the desire of the promoters of prosecutions was not to punish excesses, but to take revenge for the execution of Gordon. Moreover, after noticing the cases of the Provost-marshal and the two officers already alluded to, the only cases prosecuted by the military authorities and in which there was an acquittal, the noble earl proceeded to deal with the cases of *civilians* implicated in the alleged excesses:—

“Lastly there comes the question of the civilians, and here, of course, I feel myself mainly responsible; for I hold this distinct view—that if any colonist suffers from injustice, whatever may be his class, his condition, or his colour, he has a right to redress at the hands of the Colonial Minister in this country.”

However admirable the general spirit of this *sentiment*, it might be questioned, in a spirit of entire respect, whether as a *proposition* it is correct. For surely the *courts of law* are the proper tribunals for redress, either in the

colonies or in the mother country ; and it is not open to a Minister of the Crown at the instigation of a particular party to assume that in any colony the administration of justice is not fair and equal. Nevertheless it is manifest that this was a frank expression of the feeling which had pervaded the whole course pursued by the Home Government in this matter ; the assumption that the administration of justice in the colony was not fair towards the blacks, and that therefore it must be undertaken by extraordinary and arbitrary interference on the part of the Crown. It is equally clear that this impression had been derived from a particular party, who were actuated in maintaining it by an old standing animosity against the white population of the colony. It is apparent from the above passage in the speech of the noble earl, and from the tenor of his despatches, that his mind had been as powerfully influenced by this impression, as his predecessors, Earl Russell and Mr. Cardwell ; and one of the points on which the reader of this history will have to exercise his judgment, is whether there was any foundation for it, and whether it was not derived from the influence of a faction. The noble earl avowed that it had influenced his whole course :—

“ *Acting in this sense*, I have instructed Sir Peter Grant, the present Governor of Jamaica, to institute the most searching inquiry in his power, in order to ascertain whether there are any civilians whose conduct demands inquiry.”

It may be assumed that the noble earl had no idea that there was anything unusual, unprecedented, one-sided, and oppressive in this course towards persons who had acted in the suppression of a rebellion, and who had *already* been subjected to an extraordinary inquisition by a Royal Commission. Nevertheless, it may occur to the readers of this history, that as it was a course never pursued towards the most atrocious criminals, it was one of the most strange and oppressive proceedings ever

resorted to by any government, and could only be explained by the existence and the influence of the impression already alluded to and avowed by the noble earl :—

“In this I have simply followed in the footsteps of the right hon. gentleman who preceded me in office (Mr. Cardwell), who had previously given instructions to the same effect, but I thought the subject was of such importance that I have sent out further instructions, urging Sir P. Grant to pay particular attention to this subject.”

And also to consider whether he could not remit the sentences upon a number of persons who had been convicted before the ordinary legal tribunal of the most atrocious crimes, even murder or attempt at murder, committed during the rebellion. So that, while on the one hand, those *engaged in the rebellion* were to be treated with the most extraordinary lenity, those who had been *engaged in its suppression* were to be pursued with the most extraordinary severity.

It may be safely said that such a course was never pursued by any Minister, and it may as safely be inferred that it never *would* have been pursued in any case but that of a negro colony. It may be added, that its direct tendency was to produce the impression among the negro population that, to say the least, rebellion for the purpose of massacre of the white population was regarded as less criminal than any excessive severity in its repression, and that they might rely, if not on the sympathy, at all events, on the *lenity*, of the Imperial Government; while, on the other hand, those who should dare to act with vigour against them would have to answer for it rigidly, and would do it at the peril of their fortunes, if not of their lives. The noble earl made this clear by what followed. He said, indeed, with wise judgment :—

“And I have such confidence in Sir P. Grant as a wise and humane administrator, that while, on the one hand, he will not, I believe, rake up unnecessarily those smouldering embers which it is for the good of the

colony should expire as soon as possible ; on the other hand, if there be just cause for investigation, I am sure he will not shrink from it, whatever difficulties may attend the inquiry."

But he went on to say :—

"I ought to mention that, as some thirty-five persons are at this moment in confinement in Jamaica under long sentences for the part they took in the insurrection, and as I believe that many of these are ignorant people *misted by more designing persons*, I have left it to Sir P. Grant to report to me whether in any of these cases the prerogative of mercy may not be fairly and with policy exercised. I am sure that I represent the feeling of Parliament as well as my own when I say that I hope it will be found possible to deal with those offenders somewhat more leniently than they have been dealt with in the colony."

But Sir Peter Grant, whom the noble earl characterised as a wise and *humane* administrator, did, after mature consideration, find that it was *not* possible to deal with these cases more leniently than they had been dealt with in the colony, and in a well-considered despatch, elsewhere inserted, declined to accede to a commutation of the sentences. Thus, then, it appeared that the noble earl's impression, however sincerely entertained, that the prisoners taken ought to have been dealt with more leniently in the colony, was entirely erroneous; and, derived as it was from the party whose policy it had always been to palliate the atrocities of negro rebellions, and exaggerate the severities exercised in their repression, it might have been safely doubted whether there was any ground for it. And it may be added, with perfect respect for the noble earl, that it is to be regretted he did not reserve the expression of his opinion, until he had ascertained the opinion of that wise and humane administrator; and that he did not abstain from giving utterance to what bore the appearance of a reflection on the humanity of the former governor, which turned out to have been *entirely undeserved*. And in coming to those passages in the speech of the noble earl in which he had expressed his opinion on the conduct of Mr. Eyre, it is only fair to

bear in mind that it was an opinion formed under the avowed influence of those impressions, derived from the hostile representations of his antagonists, and which afterwards appeared to have been wholly without foundation :—

“My lords, I should be glad to stop here, but I feel bound, after the question put to me, to say a few words further. It is impossible to discuss this question without touching more or less upon the conduct of Mr. Eyre, because, after all, Mr. Eyre was the Governor, *and he was responsible for everything which took place.*”

It is impossible not to pause here, to observe that this notion thus frankly avowed, was undoubtedly the foundation of the whole view which had been taken of the case as regarded the Governor, and all the censures pronounced upon him. That is to say, the notion that a Governor, or Minister, who has authorised martial law or any other measures for the repression of rebellion, *is responsible for everything which takes place in the course of its repression.* All the respect which is unfeignedly entertained for the character and abilities of the noble earl cannot prevent the author from declaring this notion absolutely monstrous. And it would be a fitting retribution for the noble earl, if at some future time when, as his great abilities might well deserve, he should be placed in power as a Minister of the Crown, as Home Secretary, or as Lord-Lieutenant of Ireland, or even as Lord-Lieutenant of his county, and he should have occasion to order the use of military force in the repression of riot or rebellion, and they should commit some excesses, he should *be held responsible for everything which took place.* One may imagine the indignant eloquence with which the noble earl would protest against such a monstrous theory of responsibility, and disclaim his liability for excess he not only never authorised, but which were in direct violation of the spirit of his orders and the purport of his directions. For that was the case of Mr. Eyre, as the noble lord ought to have been well aware. When any man

gives general orders to take measures not necessarily in their nature unlawful, the fair and proper meaning of his order is *to do what is lawful*. And therefore Mr. Eyre's *general* directions to carry out martial law must, in common-sense and justice, be taken to have meant *with reasonable humanity and moderation*. But the case did not rest there, for as the noble earl *ought* to have borne in mind, (though no doubt amid the uproar and excitement of the agitation it had escaped his attention), Mr. Eyre had sent a written memorandum to the Commander-in-chief, desiring that only those who *deserved* death should be executed, and that the punishment of flogging should not be inflicted when it could possibly be avoided.* Nor was this all, for the noble earl, at all events, as Colonial Minister, must have been well aware that the governor of a colony has no authority to issue a single *order* to military commanders or officers; that they are all under the control of the Commander-in-chief of the colony, who is appointed by and responsible to a different department from the colonies—the department of war, and is entirely independent of the governor and the Colonial Office, and is only bound to attend to the *general* directions of the governor. The noble earl therefore must have known (1) that Mr Eyre gave no orders which authorised any excesses, (2) that he had no power to, and did not, give particular orders at all, (3) that he did all which he *could* legally do, *i.e.*, sent a memorandum by way of *suggestion* to the Commander-in-chief in favour of moderation and humanity. Knowing all this, it is almost inexplicable how the noble earl should have said that *Mr. Eyre was* “*responsible for everything which took place.*” That is to say, for acts which he never authorised, which were contrary to his intentions and directions, and of which he was not even *aware* until long afterwards. It will in future times appear incredible that such a thing should have been said

* Appendix to Report of Commissioners.

by a Minister of the Crown, and for the credit of English Statesmen the author would gladly have omitted it; but he *could* not in common justice to the cause of truth, because *it makes manifest that Mr. Eyre was condemned upon one of the most monstrous notions that ever entered into the mind of man*, and which never could have entered into the mind of any man except under the influence of the most intense excitement caused by the most violent and prolonged agitation. It is obvious that this was the view upon which Mr. Cardwell had acted in recalling Mr. Eyre, for it is implied in his despatch, and though not avowed to such an extent as by the noble earl, there was a general and substantial agreement between them. It will be found that the notion thus entertained and avowed was one so monstrous that, as Mr. Justice Blackburn observed in the course of his charge, *the prosecutors did not venture to present it*, and he told the grand jury that Mr. Eyre was *not* responsible for excesses he had not authorised, and that he was *not* responsible for the control of the military, who were under a different department and different command. And the Lord Chief Justice of England, in his final observations on the case, emphatically laid down the same principle. Let it therefore be kept clearly in mind that this notion, so monstrous, so opposed to first principles of justice, that it was not only scouted in a court of law, but was deemed too monstrous even to be *presented* by the promoters of the prosecutions, pervaded the minds of the Ministers who censured Mr. Eyre, formed the foundation of the view they took of his case, and inspired all the observations of the noble earl. He proceeded thus, in a spirit of entire candour, so far as was consistent with the presence and influence of that notion in his mind:—

“Now I cannot doubt, on the one hand, that the insurrection was a most serious one, and that the circumstances of the time were very grave. I readily admit the promptitude, the courage, the fearlessness of responsi-

bility which he displayed ; but on the other hand I am in justice bound to say that these qualities, if they are not accompanied by sound judgment on the part of the person who possesses them, become faults rather than virtues, and are in the nature of a curse rather than a blessing, to the colony with the government of which that person is entrusted. This I think was the case with Mr. Eyre. I believe he was completely absorbed in the one paramount idea of crushing out the insurrection and saving the colony ; he saw only one half of his duty, and acted up to that limited portion of his duty."

The noble earl who said this, having failed to bear in mind that which Mr. Eyre had done in the way of the *other* part of his duty, and having thus himself only looked at one half of the case, he then founded a censure of the Governor upon the view of that part alone :—

"Now the Governor of a colony is the representative of the Crown, and the first attribute and quality of the Crown is not only justice but perfect impartiality, and the power of rising above the panic and apprehensions of the moment."

Which is just what Mr. Cardwell had stated Mr. Eyre *had* done ; for that Minister distinctly so stated in his despatch recalling Mr. Eyre (as will be seen on a reference to it), and he had also distinctly so stated in his speech in the House of Commons :—

It is to the fatal want of this quality in Mr. Eyre that we may trace at least one half of the mischiefs which arose after the outbreak, through the unnecessary prolongation of martial law, and the many excessive severities which took place during that period."

Here the noble earl unintentionally fell into entire error ;—following, no doubt, in that respect, Mr. Cardwell ;—the error which formed the main ground on which Mr. Eyre was censured, *i.e.*, the error of imagining that any serious excesses took place during the prolongation of martial law, or after the date up to which the Commissioners allowed it was rightly executed. For it appeared by the report, that after that date there were no executions without trials by court-martial ; and that in the *great majority* of cases the trials were proper, and the

convictions warranted by the evidence (and the exceptions stated were very few), so that it was an entire error on the part of the noble earl to suppose that "*many excessive severities*" took place during that period. On the contrary, it was stated by the Commissioners that *there were very few*. So manifest is it, that the unfortunate Governor was condemned upon gross misconceptions, that scarcely a single statement was ever made against him which was not incorrect, i.e., was not, more or less, inconsistent with, or different from, the careful and judicial findings of the Commissioners. The truth was that these findings had been obscured and forgotten amidst the heated and exaggerated representation of partisans; and the mischievous influence they exercised may be estimated from the simple fact that it misled two successive Secretaries of State into statements entirely at variance with the case as stated by the Commissioners :—

"Courts-martial form at all times a very exceptional and a very deplorable tribunal. No one will doubt this who considers their constitution, their youth, the ignorance of the first principles of law; and very often the prejudice combined with the absolutely unlimited discretion of their members."

In all this the reader will trace an entire accordance with the opinions expressed by Mr. Mill, the Chairman of the Jamaica Committee—the committee formed to act against the Governor and the officers; and he will likewise observe that it is utterly opposed to the more enlightened views of Bentham, and of another and a greater Mill—a Mill not greater in intellect, but greater in that union of practical good sense with philosophical acumen, which is necessary in order to judge justly of the affairs of life. These eminent writers mention courts-martial as eminently just and natural tribunals, because unfettered by technical rules and left to follow the substance of justice. And the noble earl, who, as a Minister of the Crown, ventured to express so different an opinion of tribunals composed of

officers and gentlemen *who are not always "young,"* and who are specially instructed for the purpose of sitting on such cases, and are entrusted by the Legislature with the lives and liberties of hundreds of thousands of our gallant soldiers and sailors—the noble earl might have explained—why rebels who have risen against the Crown and its loyal subjects are deserving of more tender consideration than the loyal subjects of the Crown; or why the trial of rebels, traitors, and murderers, by court-martial, should have excited in his mind such warm and irrepressible sympathy. The noble earl went on to advert to history, but sadly failed to deduce its *true* results:—

"Perhaps your lordships may recollect how, not quite a century ago, Lord Cornwallis, in the correspondence which has been recently published, has left on record his bitter feelings at the atrocities carried on in 1793 by courts-martial under his own eyes, *and with hardly any power on his part to repress them.*"

Indeed!—"atrocities committed by courts-martial under his own eyes," and yet "with hardly any power on his part to repress them." Was it so? And he the *Commander-in-chief*! Then what becomes of the principle of the noble earl laid down so broadly and so rigidly against the unfortunate Governor of Jamaica, that he *was responsible for everything*? It is obvious that if Lord Cornwallis, the Commander-in-chief, was not able to repress the atrocities carried on under his own eyes, he was not responsible for them, and still less *could* Lord Camden, the Lord-lieutenant, be so. Indeed, it never has occurred to any one to suggest it. The reader, upon referring to the history of these events, will not find that any historian ventures to throw the discredit of the atrocities either upon Lord Cornwallis, the Commander-in-chief, or on Lord Camden, the Lord-lieutenant. Nay, they will find that the historian of Europe distinctly states, on reviewing those events, that the *Government* deserved "credit for *moderation and humanity,*" notwithstanding the atrocities,

although the excesses continued for *months*, because the excesses were not in accordance with any orders or directions of the superior authorities, and measures were taken to repress them *when they were discovered*, which was not until months had elapsed, so entire was the absence of all control. Yet no one blames the Commander-in-chief. No one blames the Lord-lieutenant. No one blames the Government. Nor did the Government blame Lord Torrington for the excesses in Ceylon. Why, then, should a *different rule* have been applied in the case of the unfortunate Governor of Jamaica? What difference can be suggested, except that he was *not* a nobleman backed with a powerful party, but only an English gentleman, who stood, save with such friends and defenders as sympathy for his wrongs summoned to his aid, defenceless and unbefriended, and the object of a tremendous combination and an unscrupulous agitation, wielding a prodigious political power, which few Ministers could have ventured boldly to face and to encounter? The noble earl went on to explain those objections to courts-martial, which now for the first time occurred, and only in cases of rebels, and traitors, and murderers :—

“As courts-martial were in 1793 so they are in 1866, because the objections to them depend much on the inherent nature of the tribunal itself. I will not enter into the legal question, and inquire whether courts-martial, if it be not a solecism to say so, are legal. There may be cases of dire necessity, when it is absolutely imperative to declare martial law and administer it by courts-martial, but in such cases there are several rules which ought to be observed. In the first place martial law ought not to be allowed to continue one single day or hour beyond the time which is absolutely necessary ; in the next place a caution ought to be given to those who administer those courts,* not indeed in the shape of a code of minute rules, because that would be impossible, but by a general instruction. The officers should feel that they will be held accountable for any excessive acts of severity on their part. Just in proportion as they are completely free to act, so I think they ought to

* The noble earl forgot to say by whom. As Colonial Minister he ought to have known that it could not be done by the Governor.

be zealously watched, and if necessary controlled and checked by their superior officers."

No doubt, "*by their superior officers*" — that is, not the Governor, who is *not* their superior officer, but the Commander-in-chief of the colony, who *is*. No doubt they were liable to courts-martial for any excess, or even errors of judgment. There was no want of real and reasonable responsibility. But the entire difference between this and the opinions Mr. Mill had expressed in his speech will be observed. His idea was, that because officers, on the occasion of a great emergency, are necessarily entrusted with a discretionary authority for the sake of the public safety, their exercise of it is to be watched with the most jealous and merciless severity, and in a word, that they are to be made to act with a rope round their necks! They are to be told on the one hand, "act boldly, do all that is necessary in your honest judgment for the repression of rebellion;" and on the other hand, "Mind, if you err in judgment, and fall into any excess, or what others long after and at a distance may fancy, or pretend to fancy, was excessive, why you shall be in peril of being hanged, or, at least, dismissed, discredited, ruined, and disgraced." And, be it borne in mind, that it was upon *this view* Mr. Eyre was condemned :—

"Unfortunately this was not the case in Jamaica. In the panic and confusion of the moment, these safeguards were neglected; and no doubt very serious consequences resulted from that neglect."

The noble earl, according to the report of the Commissioners, was entirely in error upon both points. The Governor, whom he was thus reprehending and devoting to public censure, had *not* neglected these safeguards, for he had sent to the Commander-in-chief a written memorandum in favour of moderation and humanity, and this had been sent to the officers, several days *before* the date at which the prolongation of martial law took place, and the Commissioners reported that in the *great majority* of cases the

trials, by court-martial were proper. The noble earl, as Secretary for the Colonies, must have been well aware (though he had obviously failed to bear in mind) that the Governor of a colony has no power to issue *orders* to the military, that he can only give general directions; and it was deeply to be regretted that the noble earl, following in this respect Mr. Cardwell and the Commissioners, failed to notice the directions which Mr. Eyre *had* given in favour of moderation and humanity. The noble earl continued:—

“It has been further said that the subject of martial law was complicated by this peculiar circumstance; that there was an act in the Jamaica statute-book, which, while it certainly expressed an opinion that martial law ought not to be established except in cases of grave necessity,* nevertheless did seem to encourage the Governor to proclaim martial law under circumstances somewhat less grave than should justify such a course. No doubt Mr. Eyre understood that he had no option but to continue martial law in operation for a full month, but that was a great mistake.”

No doubt the noble earl here followed his predecessor, Mr. Cardwell, who had so stated in the debate: but the mistake was entirely their own, Mr. Eyre had never imagined that he “had no option but to continue martial law in operation for a full month.” So far as the author is aware, there was nothing ever said or written by Mr. Eyre which could have indicated such an idea. The view always put forth by Mr. Eyre in his defence was, that as the Imperial Government and the local legislature had expressly authorised the Governor, in case of apprehended *danger* of rebellion, to declare martial law, and keep it up for a month, he could not be wrong in keeping it up for that period so long as the *danger* continued: and that the danger continued so long as the *elements* of danger existed—disposition to rebellion, disparity of force to resist it, and a general sense of insecurity and alarm. The error; the fatal error of the Ministers who removed him was in overlooking that the Act expressly authorised

* Nothing of the kind. It expressly allowed martial law in case of danger.

martial law in case of *danger* of rebellion, and therefore as long as *danger* continued to exist. The noble earl continued:—

“It will be the duty of the Governor to look closely into this point, and first to see whether similar acts do not exist in some of the West Indian Colonies, and next to bring them more into conformity with an idea of what they ought to be.”

This was afterwards represented to have meant that all Acts authorising martial law in the colonies should be repealed; and this impression was certainly countenanced by the terms of a despatch of the noble earl on the subject, which, however construed by the above words, merely meant Acts allowing martial law for any specific time.

“I have also under consideration the expediency of drawing up short and summary code of regulations, for the instruction and guidance of governors who may be placed in circumstances similar to those in which the Governor of Jamaica was placed. I do not think you can provide for every case, but you may lay down landmarks and principles which should guide governors under such exceptional circumstances.”

Mr. Cardwell had, in his despatch recalling Mr. Eyre, candidly stated that in the instructions to colonial governors there were none upon this subject, and said it would deserve consideration whether any could be framed. Upon which this observation naturally occurs, that not only had no instructions been provided for governors on the subject, but the Ministers for the colonies could not quite make up their minds, even after long consideration, whether any such instructions were practically possible; and yet these very Ministers had recalled and censured a colonial governor because he, forsooth, on a sudden emergency, had not framed and provided regulations for military officers, for whom he had no power whatever to do it. Nay, further, the Secretary of State admitted that he did not think it practicable to do more than lay down general principles or rules; and that was exactly what

the unfortunate Governor *had* done; for he had sent to the Commander-in-chief a written memorandum to the effect that he suggested that none but those who deserved death should be executed, and that the punishment of flogging should not be inflicted where it could possibly be avoided.

Nor, indeed, was this all. For he had further suggested that in every case the evidence should be set forth and considered beforehand when a prisoner was sent for trial, and that those who had arrested him should be required to state on what grounds they had done so—useful practical checks which the Ministers, after a year's time for consideration, had not thought of, and which no doubt had conduced to the result stated by the Commissioners, that in the *great majority of cases* the trials were proper and the evidence sufficient. The Secretary of State, however, unhappily forgot, or forgot to mention, the directions or suggestions issued by the Governor, and the practical *result* of them, as stated by the Commissioners, and then held him up to public reprehension for entire neglect of a duty he had discharged, to the best of human ability, in the only way in which he could possibly do so!

The noble earl then went on to advert to the case of Gordon, in which he followed his predecessor, and certainly failed to see the real point in the case:—

“Much has been said respecting the case of Gordon. I do not wish to say anything about it, for this reason, that I believe it a most terrible case, and one I consider indefensible. The evidence on which he was hung was insufficient to have convicted him.”

That is, as the noble earl afterwards explained, in answer to an observation made apparently to elicit the explanation:—

“As I understand the verdict of the Commissioners, I entirely accept it, and I understand it to be that Gordon was not proved to have been guilty of complicity in the insurrection, and that he was executed upon evidence which was insufficient. In that opinion I entirely concur.”

That is, the noble earl intended to express concurrence in the finding of the Commissioners, which was in effect, as already shown, that he was *guilty* of the insurrection, though it was not proved that he was privy to a design for an insurrection on the particular day when it occurred, which was all that they meant in saying that the evidence was insufficient. In other words, the finding was equivocal and evasive; and, while it conveyed to the public mind the impression that they found the man was unjustly executed, to lawyers, who carefully looked at the *particular facts* found by the Commissioners, it was manifest that they found him *guilty*. Moreover, they never adverted to the real point, which was, that the man was tried under military law, under which it is capital to incite to insurrection, and they expressly found that he *had done so*. The noble earl proceeded to say that the execution was honest:—

“At the same time I have no doubt that Mr. Eyre, who accepted the whole responsibility, and the officers who acted in subordination to him, acted with the most complete *bona fides* in the matter. Personal feelings, irrelevant considerations, were entirely absent from their minds, and however mistaken they were, they believed they were performing their duty. Therefore, the proposal which is sometimes put forward, to indict Mr. Eyre on the charge of murder, *seems to me one of the most preposterous proposals that could be made*. Whatever offence Mr. Eyre may have committed, murder is certainly *not* the offence which can be charged against him; and I believe *such a charge would be entirely repugnant to the common sense of Englishmen*. I think that he has suffered severely, indeed his recall has been as heavy a blow as could possibly be inflicted upon him; and looking at his history and antecedents, I believe the blow has fallen upon him most severely.”

“Most severely,” indeed! But probably his recall and ruin were not so hard to bear as to hear the Minister of the Crown hold him up to reprobation upon a statement of the case so insufficient, so defective, and, in the respects which have been pointed out, so incorrect.

To some extent the noble earl might appear to be excused, indeed, by the silence of the report as to most

of the matters important in favour of Mr. Eyre. But, as Colonial Minister, he was bound to make himself master of the *case*—the *whole* case, of which the report, after all, was only *part*, though he evidently had fallen into the same mistake as Mr. Cardwell in supposing it was the *whole*. The report, however, was only in aid of the conscience of the Crown, and the Commissioners could not relieve the Ministers of the Crown of their responsibility and their duty to look at the whole of the case, much of which lay in the despatches and the correspondence between the Commander-in-chief and the Governor, all the more important because the statements of the parties *at the time*, before any inquiry had arisen. These despatches and letters showed that the Governor had not the control over the proceedings of the military; that he had only a *general* control over their movements and measures; that there was the utmost jealousy on the part of the Commander-in-chief as to any interference with his authority; that the Governor could not venture to issue any direct *orders*; that the utmost he could do was to *send a suggestion* to the Commander-in-chief in favour of moderation and humanity, and that he *did* so; that he had so little control over the military, that after the reinforcements arrived, at the end of the month, he could not get the Commander-in-chief to have them distributed, and that it took ten days before this was effected, and that the execution of martial law almost immediately terminated. All this was in the written correspondence which took place *at the time*, and therefore was clear and beyond a doubt. The Commissioners, however, either because it did not come before them, or because they overlooked it, or thought it lay out of their province, did not mention it—that is, did not mention the matters most material to the Governor, and the Secretary of State forgot to consider it; so that thus it came to pass that the case of the Governor was dealt with, and he was held

up to public reprehension upon a statement of it, which omitted its most material points!

Earl Russell briefly expressed his concurrence in the Report of the Royal Commissioners. He said:—

“I consider it not only able, but fair, just, and impartial, as to the conduct of Mr. Eyre and all persons whose conduct is dealt with by it. I agree both in the praise the Commissioners gave to Mr. Eyre for the promptitude and extreme readiness with which he put down the incipient insurrection, and in the blame cast upon him by the Commissioners. I believe both to have been fair, just, and impartial.”

“The *incipient* insurrection!”—an insurrection of which the noble earl’s colleague, Mr. Cardwell, the Secretary for the Colonies, had stated, in his place in the House of Commons, that “*for several days the insurgents were in possession of forty miles of country, police and volunteers slain, and magistrates forced to find safety in flight*”—“an *incipient* insurrection!” which the Royal Commissioners, whose report the noble earl had just declared to be “fair, just, and impartial,” had described as “spreading with singular rapidity over a vast tract of country,” and which, according to these statements, many thousands were engaged! “An *incipient* insurrection!” Such was the spirit in which, even after such a report, the noble earl persisted in viewing the case, and such, no doubt, was the view upon which he had recalled and censured Mr. Eyre. He regarded it as an “incipient insurrection!” The noble earl, nevertheless, declared that he believed the Report of the Commissioners to be “fair, just, and impartial.” Thus it may be permitted to ask, *Why did he depart from it?* Why did he proclaim in the House of Lords a view of the case so utterly at variance with it? Is it not manifest that the unhappy Governor had been dismissed upon Earl Russell’s view—imbibed from the abolitionist party—rather than that of the Commissioners? For it will be seen that these views were utterly at variance. The noble earl said further:—

"I quite agree with the noble earl that there are not any grounds for accusing Mr. Eyre of murder ; but, at the same time, we cannot help deploring the undue severity which was used."

That is undue severity in suppressing what the noble earl deemed an "incipient insurrection." In that view no doubt it would be so. But that was not the view of the Commissioners, as will have been seen.

In conclusion the noble earl stated his concurrence in what Lord Carnarvon had said, including, of course, his most portentous proposition, that the unhappy Governor was responsible for everything that had been done by everybody! It may safely be said that the noble earl, when he gave his general approval to what had been said, had hardly appreciated the tremendous effect of that proposition, which made him personally liable for every act of impropriety or excess committed by military or police, during the time he was Home Secretary; and made every Lord-Lieutenant personally liable for every act of excess committed by military or police in suppressing riot or insurrection; and rendered every Governor of a colony personally liable for any act of excess committed on such occasions, however contrary to his intentions or his instructions, and even although at a distance, and without any knowledge or *possibility* of knowledge on his part! It is hardly worth while to contest a proposition so monstrous that its mere statement not only refutes itself, but exposes it to ridicule. The important point to be observed, however, is *that it was upon* this principle the unhappy Governor had been censured and recalled; and that it was upon this principle he was about to be harassed by criminal prosecution. Upon this principle, implied and embodied in the despatch of the Secretary of State, who had recalled and censured him; upon this principle, avowed in the face of Parliament by the Minister who had sanctioned his recall, upon this principle, distinctly assented to by the Minister who was at the head of the Government which recalled him!

And it was *necessary* to resort to this principle, in order to arrive at the least pretence of an excuse for his recall. For the Commissioners, in their careful and judicial findings, had not fixed the liability of a single act of excess upon Mr. Eyre; and the Secretary of State had in his despatch, with generous candour, acknowledged that the Government did not impute to Mr. Eyre, any personal responsibility for the excess, and had in his place in Parliament spoken of him as a man of courage and humanity. Therefore it was *necessary* to resort to this most monstrous and outrageous principle, in order to get a pretence of an excuse for recalling and censuring the Governor. And the observation naturally here occurs to the mind *how many* monstrous principles and outrageous propositions it was found necessary to resort to *in order* to vindicate his condemnation! That a rebellion of negroes in a colony in which they were in a majority of thirty to one and were as nearly half a million to a few thousands, was of no greater danger than any mere political rebellion in England or Ireland, and, therefore, required no greater measures of repression! That a governor who had directed martial law to be carried out was liable for everything done by everybody! That men were liable to be criminally punished for honest errors of judgment upon a great emergency! That men were censurable for things they never dreamt of, and which were done by others of their own will! That a governor should be censured and recalled *because black men killed one another!* This is literally what it came to. For it appeared from the report that nearly all the worst excesses were *acts of the black soldiers* in the absence of their officers. So that because a governor did not foresee that the blacks would murder one another, and did not prevent that, being absent, which their officers could not, who were *present*, he was to be recalled, censured, ruined; and now, moreover, was to be harassed with criminal prosecutions! And this after a protracted inquiry!

That the Governor should be thus harassed and persecuted by criminal prosecutions was the natural inevitable result of the monstrous principle laid down by Lord Carnarvon and Mr. Cardwell, and assented to by Lord Russell, that he was to be held responsible for everything. It is true they declared their opinion to be that criminal prosecutions ought not to be instituted against him ; but then that opinion was so inconsistent with the principle they had laid down, that it was not to be wondered at that it was set at naught, and that the infuriated assailants of the unfortunate Governor should have adopted the *principle* of Lord Russell, and disregarded his *opinions*. That principle was, that the unhappy Governor was responsible for everything. Upon that principle they proceeded to prosecute him. The Government of Lord Russell had aided them with a royal commission to extract evidence in *support* of criminal prosecutions. That was one great object for which the Commission had been obtained. The other was to afford a pretext for pressing for the immediate suspension of the Governor, which, of course, *ensured* his humiliation, and *almost* ensured his ruin. That object had, indeed, been attained ; but his enemies desired to *effectuate* his ruin, and that they thought could only be effected by means of criminal prosecution. And the Government of Lord Russell gave them a *principle* on which the prosecution might be maintained, and by that the Governor was responsible for everything done by everybody ! Upon this the prosecutors went to work to effect the entire destruction of the unfortunate gentleman. Recalled, condemned, ruined, he yet had his character, his honour, his liberty ; of all these they now sought to deprive him, and to crush him, and cast him down even into the dust ; and in this they had all the aid which a Government *could* give—from the Government of Lord Russell. This they had determined to do from the first. Before they knew the facts ; before the Commis-

sion of inquiry had sat. A "Jamaica Committee," under the presidency of Mr. Buxton, had committed themselves to the prosecution of Mr. Eyre for murder, or some great crime. They stated at the time:—

"The Committee had been formed *only* because its members, judging from the reports that have been furnished by the late Governor, believe that, in reference to the recent disturbances, *he had been guilty of acts of illegality and cruelty, resulting in the killing and torturing of hundreds of our fellow-subjects*" (Papers of the Jamaica Committee, No. I.).

This was the monstrous charge they had put forward *before inquiry*, and they added, in their instructions to the counsel they sent out to attend the Commission:—

"For the purposes of the inquiry it is necessary to consider that *Governor Eyre and his subordinate officers may have to be put on their trial for acts of illegality and cruelty, in all probability amounting to murder.*" (Papers of the Jamaica Committee, I.)

This was printed and published by the Jamaica Committee, presided over by Mr. Buxton, before the Commission had sat. That is, they had committed themselves publicly to the most monstrous charges of cruelty and criminality against Mr. Eyre; and they had avowedly made use of the inquiry they had obtained from the Government for the purpose of extracting evidence to support their prosecution of the Governor. And they had done so professedly upon the principle that the officers (who were not responsible to *him* at all) were *his* subordinate officers, and that so he was responsible for everything done by everybody. All this was known to the Government of Lord Russell, and now, after the Report of the Commissioners had appeared, not fixing upon Mr. Eyre personal knowledge or direction of a single act of excess or inhumanity, and the Secretary of State had so declared—Lord Russell, in the face of Parliament, declared his assent to the monstrous proposition that the Governor was responsible for everything done by everybody! And as that

was the principle upon which his assailants had all along proceeded, and upon which they had procured his censure and recall, of course they resolved to proceed with criminal prosecutions upon the same principle.

Two things had been made abundantly manifest by the discussion in the House of Lords—viz., that it *was* upon this principle the Governor had been censured and recalled, and that the prosecutions rested upon the same principle, and for that very reason were scouted by all men of sense and intelligence. When Lord Carnarvon declared the prosecution for murder preposterous, he spoke the opinion of every man of sense in the kingdom (who had not *lost* his senses, through insane sectarian animosity), and yet at the same time the advocates of the prosecution based them upon the very principle he avowed, that Mr. Eyre was responsible for everything. And as there undoubtedly had been acts of gross cruelty and wilful murder (by the *black* soldiers upon their black countrymen), it followed that if Mr. Eyre was responsible for everything he would be responsible for these acts. It was true that it was not attempted to make him *criminally* liable for them. But he had been *condemned and dismissed* for them, or for acts of others over whom he had no more control, nor power of control, than over the black soldiers who had murdered their brethren. And he was now to be made criminally responsible for acts of courts-martial which he did not appoint, and whose proceedings he could not control, and whose sentences were revised by military authority, and *executed* by such authority; and without any reference to him, except in one instance for the purpose of his considering whether it was a case for the exercise of the prerogative of mercy. To make him criminally liable for those acts, was hardly less absurd than to make him liable for the acts of the blacks who murdered one another. Yet it followed logically from the principle laid down by Lord Carnarvon, and assented to by Lord Russell, that the

Governor was responsible for everything. And upon that principle the Governor had been condemned.

It has already been seen, indeed, that the logical application of this principle in the form of a criminal prosecution, at all events for *murder*, was treated with derision. And it was openly derided throughout the country.

Nevertheless, in defiance of the opinion of the law officers of two successive Governments, in disregard of the deliberate judgment of the most able and experienced statesmen pronounced in the face of Parliament, in disregard of the evident concurrence of both Houses in that judgment, the "Jamaica Committee," as they were called, with a singular ignorance or defiance of public opinion, persisted in their determination to prosecute the ex-Governor and the military commander, and to prosecute them even on the charge of *murder*, thus derided by the Secretary of State in the House of Lords as "preposterous." And it may be proper here to take some notice of the composition, the character, and the conduct of this illegal combination.

It had this remarkable characteristic to begin with, that it was almost exclusively *sectarian* in its composition, as was to be expected from the account already given of its origin. The rebellion had been caused indirectly by the encouragement given at home to a mischievous agitation in the colony, and the combination was formed by those who had been most active in the encouragement of that agitation, and was composed chiefly of those who sympathised with them on political or religious grounds; that is to say, it was composed almost entirely of members of the abolitionist party, and by persons of extreme Liberal politics. In other words, it was composed chiefly of abolitionists and extreme Liberals, and it was a combination which had a marked sectarian character. At its head was, originally, Mr. Buxton, the head of the abolitionist party. On its committee were such eminent

Liberal members as Mr. Bright, Mr. Jacob Bright, Mr. Mill, Mr. Baines, Mr. Beales, Mr. T. Hughes, Mr. C. Gilpin, Mr. Fawcett, and other Liberal members, all of the same school of politics. Then there were a body of gentlemen like Mr. Goldwin Smith, Mr. Titus Salt, and many others, known as professing advanced Liberal opinions. Then there were eminent Nonconformists, such as Mr. S. Morley and Mr. Miall, and there were many gentlemen of the same school of politics, who were very desirous of getting into Parliament, as they tried to do at the next election, who were, of course, desirous of bringing themselves as much as possible into public notice. Speaking generally, the members of the Committee were abolitionists, and almost entirely, it is believed, of a very advanced school of Liberal politics, not a few of them of the *most* advanced school of Liberalism, and some of them men of *very* extreme opinions; so much so, indeed, that one of them was the President of the Reform League, which was at that very time marshalling vast demonstrations to overawe the Legislature;* and some of them had presented a petition to the House of Commons, expressed in terms of such strange tenderness for political conspirators, that there was a sharp discussion in the House as to whether it was such

* It is necessary in order to appreciate the position of affairs at the time, and their influence upon the case of Mr. Eyre, to attend to a piece of contemporary history conveyed in the following passage from the Report of the Reform League:—

“When the anti-Reform party in the House of Commons defeated Mr. Gladstone, the League put forth its full strength. Then really commenced the education of the Tory party. The meetings which we had previously held were chiefly confined to rooms and halls; these were found to be insufficient, and we transferred them to the open air. Then commenced what *have been aptly termed demonstrations*: first on Clerkenwell-green, Blackheath, and Primrose-hill, and in other parts of London, followed by similar gatherings at Leeds and Birmingham. The next step was that the London branches of the League determined to *concentrate their meetings on a central point*, and they selected Trafalgar-square.

“Then followed the now celebrated demonstration at Hyde Park, on July 23rd, 1866. The Tory Government having illegally closed the park gates against the people, *the park palings fell*; the police and military, called in to the aid of the Government, were unable to clear the park either that evening or on the two following days.

a petition as ought to be received.* The extreme Liberal party were therefore, it must be admitted, in a state of feeling when they were very apt, under the influence of a fallacious idea of entire identity with this country, to regard the exercise of martial law, even in a colony, with feelings not favourable to a calm and just judgment. The prevailing elements in the composition of the Committee were that of religious sectarianism and extreme political Liberalism; perhaps the former element chiefly pervaded the character of the combination, and two of the most active members of the Executive Com-

The efforts of the League were completely successful, and they celebrated the event in a monster meeting of nearly 30,000 people in the Agricultural Hall on the following Monday, July 30. Then followed in quick succession the monster demonstrations at Birmingham, Manchester, Leeds, Glasgow, Dumbarton, Newcastle, Bristol, and other places too numerous to mention, culminating in the great demonstration in Hyde Park, in May, 1887, which the Government threatened and actually prepared to suppress by military force. The lessons taught by the immense gatherings of the people above referred to were too impressive to be lost even on a Tory Government, &c. In other words that vast mobs had been organised to overawe the Legislature and the Government."

The report was signed by Mr. Beales, a political associate of Mr. Bright, the most powerful member of the Jamaica Committee, and himself a member of it; and it was added:—"During the past winter we have inaugurated and carried out with eminent success a series of lectures for the political education of the people. Mr. W. E. Forster, M.P., Professor Fawcett, M.P., Mr. James Stansfeld, M.P., Mr. J. A. Mundella, and Mr. Ernest Jones were among the lecturers.

The Mr. W. E. Forster here mentioned—a vehement abolitionist—was Under Secretary of State for the Colonies when the ex-Governor of Jamaica was suspended and recalled, and in the debates on the subject professed (admitting it to be an extreme opinion) that he could not admit that in any case martial law could be ever necessary. It was natural that a gentleman in such close political alliance with such a political body should be exceedingly averse to any exercise of martial law. And the thing to be observed is that it was men of such extreme opinions by whom the unhappy Governor was censured and recalled.

* The following is the substance of the petition presented by Mr. Bright, and signed by several of the most prominent members of the Committee, respecting a conspiracy of the most atrocious character. The petition stated:—

"That in the apparent hopelessness of a remedy for the evils which press on their country, honourable Irishmen may, however erroneously, feel justified in resorting to force; that, in a word, there is legitimate ground for the chronic discontent, of which Fenianism is the expression, and therefore palliation for the errors of Fenians; and the petitioners, therefore, prayed the House, that it might take such measures as it shall judge fit:—Firstly, to secure the revision of the sentences already passed on Fenians—sentences of great, and, in the judgment of your petitioners generally, excessive and irritating severity. Secondly, to provide in any case that prisoners suffering as the Fenians are for a political offence shall not, during the execution of

mittee, were the two persons* who had been so closely associated in correspondence with Gordon, who was executed as the author of the rebellion.

It may easily be imagined with what resentment such men would regard the summary execution of a man, with whom some of them had been closely associated, on a charge of exciting to rebellion, which, to Liberals of an extreme school, would seem a very venial offence; and a rebellion of negroes against whites, which, to abolitionists, would appear no offence at all. It may also be conceived with what rancour and persistency such a body of men would pursue the Governor, who had ventured on an act of such vigour as the execution of a political incendiary. It would only be natural that they should fail to observe and to realise the enormous difference between a negro colony and the mother country; and, above all, the peculiar circumstances which rendered the case of Jamaica so exceptional as to be without a possible parallel, and *failing* to realise this, they would naturally—nay, unavoidably, be roused to the most insatiable animosity. And it was hardly likely that a body so composed *would*

their sentence, be confined in common with prisoners suffering for offences against the ordinary criminal laws of their country. Thirdly, your petitioners, justly alarmed by their recollection of the atrocities perpetrated by the English troops in Ireland in 1798, as also by the recollection of the conduct of the English army and its officers in India and Jamaica; lastly, by the suggestions of the public press and the general tone of the wealthy classes with regard to the suppression of rebellion, pray your honourable House to provide that the utmost moderation and strict adherence to the laws of fair and humane warfare may be inculcated on the army now serving in Ireland. Lastly, your petitioners pray that the prisoners taken may be well treated before trial, and judged and sentenced with as much leniency as is consistent with the preservation of order, and that in the punishments awarded there may be none of a degrading nature, as such punishments seem to your petitioners inapplicable to men whose cause and whose offence are alike free from dishonour, however *misguided* they may be as to the special end they have in view, or as to the means which they have adopted to attain that end." These "means" being atrocious assassinations. It will be obvious that the petitioners viewed with aversion the conviction and punishment of such offences even by the ordinary tribunals. The petition had been already presented and received before its language was observed; it was then sharply commented upon, and very nearly rejected.

* Mr. Underhill, the Secretary of the Baptist Mission, and Mr. Chamerovzow, the secretary of the Anti-Slavery Society. See the Introduction.

recognise and realise these circumstances—one part of them being entirely ignorant of the colony, and the other part being of a particular faction, animated by a traditional hatred of the colonists. There was, therefore, no possibility that such a body *would take a just or fair view* of the case; and, animated by an animosity, naturally arising out of such views, no doubt sincerely enough entertained, they pursued the unhappy ex-Governor with a persistency utterly unexampled.

And such being the character and temper of the combination against him it was natural though lamentable that they should permit themselves to continue a course of agitation against him, which was calculated to prejudice his fair trial in the charges they intended to prefer against him. Some of the most able of them, not content with the speeches made in Parliament against him, wrote inflammatory articles in the newspapers against him, and one of them excused this course on the ground that the matter was one of public interest, the very reason why such a course was at once unnecessary and improper, as tending to inflame the public mind against the accused. Nor did the impropriety of the course taken stop even there; for it was no secret that not only members of the Committee, who were virtually prosecutors, but the *counsel* for the prosecutors, wrote articles in the papers against the person they were about to prosecute. Nor is even this the worst. For in these articles or speeches, statements were made entirely at variance with the careful and judicial finding of the Commissioners; and on the other hand it is fair to add that they were all based on the principle laid down by Lord Russell, that the unhappy ex-Governor “was responsible for everything.” Upon this theory all the excesses which had been committed were constantly paraded before the public mind as if he was personally responsible for them: he was reviled for cruelty and inhumanity; and after the country had been thus industriously

inflamed against him, it was proposed to indict him for murder.

It was not likely—it was not possible—that in a country like this, so remarkable for its sense of justice, and love of fair play, a course of conduct such as this should fail to excite the most wide-spread indignation and disgust. When it was observed that notwithstanding the result of the protracted inquiry, which had in effect completely exonerated the Governor, except as to some alleged error of judgment, it was resolved by his persecutors to persist in criminal prosecutions, an association was formed for his defence.* Two eminent men, whose names are dear to science and to literature, Sir Roderick Murchison and Mr. Carlyle, were among the earliest to come forward on his behalf; and under their influence, a number of peers and gentlemen of distinction, headed by the Earl of Shrewsbury, a generous, chivalrous, and high-spirited nobleman, since then unhappily lost to the country, associated themselves together in a committee to raise an Eyre Defence and Aid Fund. This committee differed from the other in two remarkable respects. It was defensive and not aggressive, and it was the reverse of sectarian; for it embraced men of every variety of rank, profession, or pursuit, and of every variety of religious or political opinion.

And it is only fitting that the names and designations of those who thus came forward generously to the defence of an oppressed and persecuted gentleman, and for the vindication of the great principles attacked in his person, should be recorded and remembered as not the least important and interesting incidents in this history. The Committee was thus composed:—†

* Under the auspices of an able and spirited gentleman, Mr. Hamilton Hume, whose sympathies were enlisted on behalf of Mr. Eyre, and whose talent and energy effected a brilliant success.

† The members of the Executive Committee are distinguished by asterisks.

THE EYRE DEFENCE AND AID FUND.

President—The Right Hon. the Earl of SHREWSBURY and TALBOT.

Vice-Presidents { THOMAS CARLYLE, Esq.
 Sir RODERICK IMPEY MURCHISON, Bart.,
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T. Grissell, Esq.

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Rev. Main S. A. Walrond

C. Raikes, Esq., C.S.I.

Sir Samuel Baker

The Hon. Francis Lawley

Sir George Russell Clerk, K.C.B.

Admiral Sir Wm. Bowles, K.C.B.

Lord Boston

Sir Henry Wilmot, Bart.

The Right Hon. Sir Hamilton

Seymour, G.C.B.

General Sir William Gomm, G.C.B.

James Carson, Esq.

Shirley Brooks, Esq.

James Lowther, Esq., M.P.

Sir Charles Domville, Bart.

Colonel the Hon. S. C. Stanley

Rear-Admiral Andrew Drew.

HAMILTON HUME,

Hon. Secretary.

And the publication of this Committee was followed not

long afterwards by the publication of long lists of subscriptions, many of them of princely amount, others, on the other hand, the aggregates of numerous contributions of small sums from persons of humbler means, indicating a wonderful strength and depth of public opinion in favour of Mr. Eyre, not only in the United Kingdom, but throughout the empire at large.

This powerful Committee was supported by the adhesion of a still larger body of noblemen and gentlemen, including numerous peers and members of Parliament, and a vast number of persons of eminence, either from their rank, position, or reputation. There were the Dukes of Buccleuch and Portland, of Leeds, Manchester and Northumberland; the Earls of Sandwich and Dartmouth, of Cawdor, of Glasgow, and of Romney; Earls Percy and Powis, Leven, Manvers, Fortescue, and Tankerville; the Marquises of Carmarthen and Lothian; Viscounts Combermere, Hood, Gage, Templetown, and Melville; Lords Wharnccliffe, Lonsdale, Hinchinbrooke, Lindsay, Leconfield, Berners, and Grosvenor; Lord Claud Hamilton, Lord E. Clinton, Lord Forbes, Mr. Sotheron Estcourt, numerous persons connected with the peerage, and half the baronets of England, with a whole host of members of Parliament. There were Admirals, and Generals, and Statesmen, and men whose names were illustrious for learning, or for science, in literature, or in art. There were such men as Sir Hamilton Seymour, and Sir George Seymour, and Sir Edward Cust, and Sir James South, and Sir William Forbes, and Sir Cecil Beadon, and Sir William Armstrong, and Sir George Bowles, and Sir Charles Parker, and Sir T. Cochrane, men who had served their country in every species of public capacity, and acquired honour in her service. There were men like Colonel Gawler and Sir John Davis, who had governed some of our colonies or foreign dominions, and men like Sir John Orde, who were about to assume the government of some of our distant dependencies; there

were poets like Tennyson, and writers like **Ruskin**, and Kingsley, and Shirley Brooks, and S. C. Hall, and G. Augustus Sala; there were men of science like Tyndall, and eminent physicians like Sir J. Clark; hard-working lawyers like the great real-property jurist Joshua Williams; divines and dignitaries of the Church, and a host of clergymen of every school; there were actors such as Charles Kean, and Webster; and artists, like Stansfield; there were merchant princes and mercantile firms without number; and there were working men and working women in the humblest position of society. Not less than *ten* long lists of subscriptions appeared one after the other, in aid of Mr. Eyre, embracing hundreds of names, and amounting to some thousands of pounds; an amount which, large as it was, would not indeed exceed the sum of ten thousand pounds, which the Jamaica Committee asked, for the purpose of harassing him by criminal prosecutions; and which was certainly necessary for the heavy expenses of the *defence*. The subscription lists exhibited the names of persons in every rank and grade of society, peers, and men of the highest rank and position; and numbers of persons of the humblest class.*

Nor was it only the adhesion of men in every rank and position in society which indicated the amount of public opinion rapidly forming in favour of Mr. Eyre. There were public adhesions still more marked and still more impressive—the adhesion of some of the most distinguished of the *women* of England. Their sex—whose perceptions of the *right* are, it has been observed, far more rapid than those of the other sex—and, in this respect, more resemble the rapid intuitions of genius than the slower processes of judgment—were, from the first, strongly in favour of the unfortunate ex-Governor; and, averse as they are to publicity, many of them, now did

* Thus “the working men of Hackney” sent several pounds; and 510 of the volunteers of the militia sent a contribution; fifty young clerks in a banking house sent a sum they collected; and there were numerous shilling subscription lists.

not shrink from appearing publicly as his supporters. The venerable Viscountess Palmerston—the widow of the great statesman who, whatever his errors of policy, was at all events a man of noble and generous character, and never, in the whole course of his long career, had betrayed a colleague, forsaken a friend, or sacrificed an honest servant of the crown,—as if to indicate the view which the deceased lord would have taken, and to attest in the most significant manner the truth of Lord Derby's observation, (which fully expressed the *general* opinion,) that *he* would never have given up the ex-Governor to his enemies—now came forward and enrolled her name among the public subscribers to the fund formed for his defence and for his aid. She was followed by the Countess of Harrington, the Countess of Westmoreland, Viscountess Enfield, Lady William Russell, Lady George Quin, Lady Frankland, Lady Nicholl, Lady Hare, Lady Gipps, Lady Moore, Lady Dorothea Campbell, Lady Hawes, the Hon. Mrs. Wynn, and many other ladies of position in society,* as well as by a host of women of humbler rank, who thus testified their sympathy with the man who had saved their sisters in Jamaica from a fate, in comparison with which *death* would have been a mercy.

Thus there were contributions from hundreds—it may be thousands—of both sexes, in every rank and position in society, as there were contributions from men of every profession and pursuit. There were contributions not only from numbers of officers of our two gallant services, the army and navy, and from the men of many regiments, and the crews of many vessels, but from the peaceful students of our universities, and the members of our learned professions, and even from the sacred profession of the clergy.

* The author cannot deny himself the pleasure of recording the names of some of his fair countrywomen who so generously came forward; he wishes he could record them all. A lady named Cholmley was very munificent.

Nor was it only the gentle or the chivalrous who, guided by their sentiments or feelings, came to the rescue of one they considered persecuted; there were hundreds of contributions from hard-headed men of business who acted only upon judgment. Our merchant princes sent magnificent contributions, and perhaps one of the main elements in the subscription lists were the numerous mercantile firms, in all our chief cities, who represented, more than any other class, the sound judgment and sensible practical views of a subject, which are characteristic of this class.* Many of their contributions were munificent—in some instances hundreds of pounds; and it may be added, that there were *anonymous* subscriptions of large amounts,† which indicated, perhaps more than any other, silent depth and strength of feeling, with, perhaps, some indisposition to encounter popular prejudice.

The subscriptions came from all parts of the United Kingdom; not only from all the chief cities of England and Scotland, such as London and Bristol, and Liverpool and Birmingham, but from the most remote districts of town and country, and even from Ireland.

Subscriptions came from London and Bristol, from Liverpool and Birmingham, from Sheffield and Glasgow, from Oxford and Rugby, in fact from all parts of the country; and from places as remote as Kircaldy. Thus, for instance, there were such entries as these:—

“From a few sympathisers at Rugby,” £15; “Subscriptions from Isleworth”; “Collected by the Glasgow Sub-Committee”; “From several gentlemen at Oxford”; “Collected by the Sheffield Sub-Committee”; “From

* Thus John Morant, Esq., gave £500, John Laurie, Esq., £100, Alfred Mundy, Esq., £100, W. R. Mitchell, Esq., £100, Charles B. Young, Esq., £100, Watson Taylor, Esq., £100, H. G. Bohn, Esq., £150. The mercantile firms who contributed were innumerable. Some, as Cottam, Morton, & Co., gave £100, many gave £50, and the names of many of these firms gave additional value to their donations, thus Thomson, Hankey, & Co., gave £50. Many noblemen and private gentlemen also gave liberally. There were numerous subscriptions of £50. The Duke of Portland gave £100, Earl Powis, £100, and John Ruskin, Esq., £100.

† A. Z., £200; G. N., £300.

Mr. Commissioner Sanders, Birmingham"; "From Whitby"; "From the Sub-Committee at Bath"; "the Cheltenham Committee"; "the Hastings Committee"; "the Worcester Committee," &c., &c.

Nor was this all; subscriptions came from all parts of the empire, from the most distant of our dominions and dependencies, from the West Indies and the East, from the West Indian colonies, and from our Asiatic settlements, from Singapore and Hongkong. Thus the following were observed:—

"From a Lieut., R.N., serving on the West Indian Station," by Lord Cosmo Russell; "From gentlemen at Barbadoes, at Grenada, and other of our West Indian Colonies"; "From members of the Bengal and the Bombay Civil Services"; "From C. Horne, Esq., B.C.S., Mynpoore"; "From a few gentlemen at Singapore, £30"; "From several gentlemen at Hongkong"; "From the English residents at Mooltan, £25."

Many of the anonymous subscriptions were sent with observations or expressions significantly indicative of the nature and strength of the feelings which had dictated them. There can be no doubt that these observations expressed the feelings with which hundreds who had *not* given any verbal expression to their opinions had subscribed, and they afforded altogether an interesting embodiment of public opinion:—

"A lady who was in India during the mutiny"; "From a sympathiser with the white victims of negro atrocity"; "One who thinks Governor Eyre saved Jamaica, and has been most unjustly treated"; "A lady ashamed of her country's ingratitude"; "One who despises those who traduce men's characters"; "A lover of fair play"; "One who firmly believes that Mr. Eyre did his duty, and that he has simply been the unfortunate victim of political circumstances, and of a great deal of inconsiderate prejudice"; "From an admirer of a brave and good man"; "From one who gratefully owes her life to Mr. Eyre's prompt energy and justice"; "From one who thanks Governor Eyre for saving the lives of Englishmen and Englishwomen"; "A lady who has suffered by the insurrection, and believes Governor Eyre has saved Jamaica to his ungrateful country"; "One who perceives the necessity of firmness and vigour in those in authority"; "A shilling subscription collected from sympathisers with Governor Eyre and their white brothers and sisters"; "One whose sister was massacred at Cawnpore"; "From one opposed to

injustice"; "One who ascribes the insurrection to the teaching and preaching of the Anti-Slavery partisans"; "With a mother's thanks"; "A lover of Justice"; "A lover of fair play"; "One who has not forgotten Cawnpore."

These feelings and sentiments thus expressed, along with the number and character of the known subscribers, indicated very unmistakably that the tide of public opinion, as time went on, was running more strongly in favour of Mr. Eyre.

And this feeling in favour of Mr. Eyre was strengthened among intelligent men by observing how gross were the misrepresentations of the case against him, and how flagrant the fallacies on which it rested, arising from the narrow and one-sided view taken of it by his assailants. This was well and powerfully put in a letter from Professor Tyndall to one of the Jamaica Committee, who, following their usual course of tactics, had sent him some of the "papers" containing accounts of some of the isolated and exceptional excesses, and desired him to form his judgment on the case from those wretched materials. In his reply, that eminent man entered into the *general condition of the colony* at the time the rebellion broke out, and sought to realise the *danger* which existed. After adverting to the topics treated of in the introduction to the present work, as showing the chaotic state of the colony, and the awful danger of a *negro* insurrection in a colony in which they form an overwhelming majority; and after adverting to the perilous position of the colony in the previous months, when rebellion had very nearly broken out, and was only kept down by the presence of a large force, *which had been withdrawn*, Dr. Tyndall proceeded:—

"On the 11th of October, as above stated, the much dreaded action began. The governor of the island had then thrown upon him the responsibility of preserving the property, lives, and honour of 14,000 British men and women, who were scattered in isolated and unprotected portions among a negro population of 350,000.

"And it is to be remarked, that the leaders of these people were well

aware of the advantages of their position. That they were not held back from revolt and rapine by the fear of subsequent retribution. In the neighbouring island of Hayti they had the example of a people which had successfully defied the power of France. In reply to an intimation of the swift vengeance of England in case of insurrection, Mr. G. W. Gordon was able to point out that 'all the power of the great Napoleon could not put down the rising in Hayti, and that was successful, for the troops died of disease before they could meet the people in the mountains.' And when the power displayed by England in crushing the Indian mutiny was urged upon his attention, Mr. Gordon was able to respond, 'India is not at all a case in point, for India is a flat country, and the English troops would overrun and conquer it; but this is a mountainous country, and before the British troops could reach the mountains they would die of disease here.'

"Taking all these things into account, I endeavoured to clearly realise the position of the Governor who had this problem suddenly thrust upon his attention by the butchery at Morant Bay. How, with the force at his disposal, to preserve the lives of 7000 British men, and the honour of 7000 British women, from the murder and the lust of black savages capable of the deeds which history shows to be theirs in St. Domingo; and a re-enactment of which had, to all appearance, begun under the said Governor's eyes.

"I will not dwell upon the measures taken then and there by the Governor to solve this problem. For his deeds in the first instance have won for him the praise of his censors, and have challenged without hostile response, the judgment of yourselves. But you denounce him for extending martial law beyond the necessary period, and for inflicting the punishment due to rebellion 'for days and weeks after all resistance had ceased.'

"I am not prepared to question the truth of these allegations; I am not prepared to deny that the period of punishment was too long, or that its character was too severe. Now that the smoke of battle has cleared away, you perhaps see more truly the character of the field. But I would invite you to transport yourselves to that field while the smoke still hung upon it; to remember that a former rebellion in Jamaica which everybody supposed to be quelled in May broke out 'with redoubled fury in June;' to think of Governor Eyre with the blood of his slaughtered countrymen before his eyes; with the memories of St. Domingo in his mind; with the consciousness that the whole island round him was near its point of combustion, and with no possible means of estimating *how* near. In what way, gentlemen, some of your number would have acted under these circumstances, God only knows. In all probability they would have acted kindly and calamitously, for philanthropists can unconsciously become shedders of blood. How others of your number would have acted I believe I *do* know. They might have acted with more tact, and thus given less offence, but their measure of mercy to the murderers would not, I am persuaded, have exceeded that of Governor Eyre.

"It appears to me that you practically forget the circumstances which I

am here endeavouring to bring before your minds. There seems a tendency on your part to tone down the crimes of the negro and to bring his punishments into relief. You speak, for example, of the massacre at Morant Bay as 'a local riot.' But, looking at the historic antecedents, what right had Governor Eyre to come to this conclusion? Had he come to it and acted on it, he might have earned for himself the execration of the English people; if not of mankind. To his knowledge, the whole island was disaffected; and history had informed him what a disaffected negro population can do. He knew how they could plot in secret, and spring like tigers on their victims the moment their plans were matured. Only think of his position, knowing that such things had occurred, and with a horrible practical intimation before him that they were about to occur again. The height and span of a bridge, gentlemen, must be regulated with reference to the larger floods, and the action of Governor Eyre had to be determined, not by the hypothesis of a local riot, but by the contemplation of the calamities which were certain to overwhelm the whole island if the insurrection were permitted to expand. No narrower assumption than this could, under the circumstances, be entertained. Had the local riot hypothesis been demonstrable *at the time*—could it have been proved that the insurrection was confined to a single parish, and that the culprits at large would not spread the fire of rebellion throughout the colony, I would join you in condemning Governor Eyre. But no such thing was demonstrable. Had he had force at his command sufficient to cope with insurrection, even though the whole island were engaged in it, I would let him answer for himself. *But he had no such force.* The power opposed to him, if permitted to organise itself, was sufficient to swallow him and those for whose lives he was accountable. He was, therefore, obliged to augment his relative strength, by damping everywhere the spirit of rebellion, and this could only be done by making the name, power, and determination of England terrible throughout the island. That errors should be committed, that cruelties should be perpetrated, that wrong should be done, is, I fear, under such circumstances, unavoidable; but the error, the cruelty, and the wrong, so far as they were committed, were for the most part beyond the control of Governor Eyre.

You have directed my attention to the case of Mr. Gordon, and I have looked into it again. I pass without comment the evidence of Lieut. Edenborough, the extreme gravity of which cannot be overlooked, because, through the miscarriage of a letter, his evidence, though in the blue book, was not taken before the Commissioners. From the speeches of Mr. Gordon in the House of Assembly; from his relationship to Mr. Paul Bogle, one of the principal murderers of Morant Bay; from his letters to Mr. Lawrence, his manager; from his conversations with Messrs. Harrison, Beckwith, Ford, and others;* from his published address to the

* *Vide ante*, Introduction.

negroes, and from his other addresses, the conclusion seems indubitable, that he was the taproot from which the insurrection drew its main sustenance, and that Governor Eyre was justified in concluding that no man concerned in the murder of our countrymen was more guilty than he. When, therefore, the sentence of Gordon, after having been approved by his officers, was submitted to him, he did not stay judgment, but ratified the decision that others had pronounced. Whether, in the details of this proceeding, he committed or did not commit a legal blunder, I am not able to say. If he did, he has surely paid dearly for it by the ruin of his career. I notice throughout his entire conduct the clear conviction on his part that he was doing his duty, the undoubting trust in the justice of his countrymen which caused him to neglect the personal safeguards which a more adroit person would have employed. To associate the term "murder" with his name is, in my opinion, without justification. There is no propriety in the term unless it is backed by assumptions which no man has a right to make. And if in the prosecution, which, to the detriment of this country, is now invoked against Governor Eyre, the execution of Gordon, from a lawyer's point of view, be deemed indefensible, I trust the common sense of Englishmen will perceive that it was caused by those whose own bloody atrocities had, for the time, stifled mercy and abrogated law.

"Such, gentlemen, are the notions and interpretations which your courtesy in writing to me induces me to lay before you. And such being my notions when asked to join the Eyre Defence Committee, I felt that cowardice, or a dislike to the worry involved in the act, was the only reason which opposed my doing so. Concluding from what I had observed in society, that Governor Eyre was more likely to suffer from timidity than from conviction—that the dread of you, gentlemen, and of those whom you represent, was very widely spread—I overcame my strong reluctance to mingle in any matter of the kind. I pledge you my word of honour, gentlemen, that during this inquiry I have had laid before me the testimony of men of approved valour, coolness of judgment, and capacity, who have occupied positions of the most critical danger, who have extricated themselves and others from such positions in a manner which has secured for them the unanimous applause of the people of this country, and who from data gathered on the spot conclude that in the month of October, 1865, Governor Eyre saved the whole white population of Jamaica from massacre. I have the solemn assurance of such men, that England has few sons as noble, few men so equal to a great emergency, few who have done the state such service as Governor Eyre. And I now call upon you, with the most solemn emphasis that man can address to man, not to permit personal pride, the love of victory, or the desire to substantiate that to which you have committed yourselves, because you are so committed, to influence your further action in this matter. I call upon you in the name of all that is wise and dignified in human nature,—in the name of all that is just

and manly in the English character,—not to permit the folly of Governor Eyre's admirers, if such folly should, in your estimation, exist, to colour your judgment in this grave question. And whether you will hear, or whether you will forbear, I call upon the men of England who share the views here set forth, to throw themselves without delay between you and Governor Eyre, and to prevent you from adding to the harm which he has already experienced at your hands."

Nor was this the only appeal made to the common sense and common justice of the people of England, by men of the highest eminence, in favour of the ex-Governor. At a public meeting afterwards held under the presidency of the Earl of Shrewsbury, the same distinguished man thus clearly, candidly, and forcibly put the question:—

"Mr. Mill doubtless sees in himself the asserter of constitutional principle. I see in him the prosecutor of a man who has done the State incalculable service. I see him endeavouring to fix the brand of murder upon one who, whatever may have been the excesses committed by his subordinates, saved the colony which he ruled from excesses a million times more terrible; who, by swift action, and the prompt quenching of a conflagration already ignited, and the most combustible materials, saved the island of Jamaica from scenes of bloodshed and dishonour, which, had they been permitted to occur, would have called down both upon him and upon those who had trusted an English colony to his unworthy hands, the curses of the English nation. This manner of viewing the subject is the result of all that I have been able to learn regarding the character of the Jamaica negroes. It is based on the historic atrocities committed on white men and women by the negroes of a neighbouring island; *it is based on a knowledge of the state of Jamaica for months previous to the insurrection; during which time the colony was rife for revolt; it is based on the bloody and cruel character of the outbreak at Morant Bay, which was the first bud and blossom of the disaffection.* Finally it is based on the almost unanimous testimony of the white population. It is constantly urged by the supporters of the Jamaica Committee, that the execution of Gordon is a frightful precedent. *But if the precedent be restricted to Jamaica, and to men of Gordon's stamp, who provoke insurrection there about four times in a century, it is not frightful, and the extension of it to England is unwarrantable. Who dreams of making Jamaica a precedent for England?* Certainly not the defenders

of Mr. Eyre.* We do not hold an Englishman and a Jamaica negro to be convertible terms. It is easy to talk of the administration of British law without regard to colour. But with the testimony we have as to the character of the negro, I cannot accept the negro as the equal of an Englishman, nor admit that a negro insurrection and an English insurrection ought to be treated in the same way. If this be not so—if the falling into the hands of a Jamaica negro be a different thing from falling into the hands of an Englishman, then the conclusion is self-evident, that we are justified in going further to prevent the one calamity, than to prevent the other. *If the effort to repress crime is to bear any proportion to the agony which its commission would inflict, then I say that the repression of a Jamaica insurrection ought to be more stern than the repression of an English insurrection.* Thus, therefore, however I may deplore, or even denounce some of the occurrences associated with the quelling of the Jamaica insurrection, I cannot forget the cardinal fact that Jamaica is still a British colony—that the men of England within its boundaries have been saved from massacre, and the women of England from a fate which is left unexpressed by the term dishonour.”†

Here this eminent man, with the clear-headedness characteristic of a man of science, again and again hit the real point in the case, the point which had already been touched by the master-hand of the great statesman Lord Derby, and was afterwards driven home by the robust common sense of Mr. Justice Blackburn, that the *severity of the measures must be proportioned to the character and degree of the danger to be guarded against.*

Men of the highest eminence expressed, on the same or other occasions, the same opinion. Sir Roderick Murchison, who, on the first rise of the agitation against Mr. Eyre, had come forward nobly on his behalf, now again publicly declared his judgment, that—

“After the elaborate inquiry which has taken place in Jamaica, Mr. Eyre acted as every loyal governor ought to act, when, at a great moral responsibility, he saved the lives of the colonists committed to his care.”‡

* On the contrary, the Author had written a book showing that the common law had sanctioned martial law in ages past, when large portions of the population were in serfdom, and that for a century or so it had become obsolete in this country.

† Appendix to Mr. Hamilton Hume's interesting Life of Mr. Eyre, p. 28.

‡ Ibid., p. 286.

And he read a letter from Sir James Clark, expressing the same opinion :—

“ Mr. Eyre's position was one of the most anxious and responsible in which a man could be placed, the preservation of an important colony, and the lives of many thousands of his countrymen and their families hung upon his conduct. He preserved both by his judgment and decision. Had he failed by lack of either, those who are now accusing him of cruelty, and even of murder, would have been equally ready to stigmatise him as unfit for his position.”*

So the poet Tennyson, in sending his subscription, wrote these few telling words :—

“ I sent my small subscription as a tribute to the nobleness of the man, and as a protest against the spirit in which a servant of the State who has saved to us one of the islands of the Empire, and many English lives, seems to be hunted down. In the meantime the outbreak of an Indian mutiny remains as a warning to all but madmen against want of vigour and swift decisiveness.”†

Many gifted men sent similar letters. Such was the opinion of numbers of men of intellect ; and of not a few of those who possessed the rare gift of genius, which has an almost intuitive power of perception. But it was not only the mere opinion even of the highest order of intelligence. There was not wanting the still more valuable testimony of men who had *known* Jamaica, who spoke from knowledge, and were able to pronounce an informed judgment. Thus, General Sir William Gomm who had commanded the forces in the island, spoke thus at the meeting already alluded to :—

“ I *know* Jamaica, I know it intimately, most intimately ; I know the various orders of its strange community, and the exceptional character of the relations they bear to each other, and thence I was fully prepared to receive the distinct admissions after mature deliberations, both of the Royal Commissioners and of her Majesty's late Government, that it was owing to the skill, the energy, and promptitude of Governor Eyre, that the whole colony was saved from a calamity incalculable. It is my firm belief that the means adopted by Governor Eyre were pressed upon him by

* Appendix to Mr. Hume's Life of Mr. Eyre, p. 287.

† *Ibid.*, p. 291.

difficulties and dangers rarely paralleled. It is, further, my deliberate opinion that he saved the island to the British Crown."

Such an opinion from such a man might well be set against that of men entirely ignorant of the colony, and of the exigencies of the emergency, and looking at the matter months afterwards through the mists of passion and of prejudice raised by a prolonged agitation.

Nor did it rest merely upon the judgment of those who *had* been in the colony, and knew it well. It was also the judgment of men who had been in the colony *at the time* of the rebellion, and of men of various professions and pursuits. Thus the naval commander on the station, Sir Leopold McClintock, whose rash adoption of mere loose reports had such a disastrous influence in arousing the agitation,* now made a noble reparation, by writing home a generous letter, in which he did full justice to the unfortunate ex-Governor, and which was now publicly read :—

"He is a noble fellow, a man whom England may well be proud of. He acted vigorously in a great emergency, and saved the white population of the island from massacre. He is no lawyer, but he *behaved with cool judgment* ; and he stands higher in my opinion than he did previous to the late events, which have proved him to possess great qualities."

It was hardly possible to have better or stronger testimony than this in favour of the ex-Governor ; the testimony of the late Commander-in-chief of the colony, and of the naval commander at the station at the time of the rebellion. But this was not all. It was supported by the opinion of men of the highest position, and of opinions the most different and even opposite persuasion on all other subjects. Thus, the Protestant and the Roman Catholic bishops of the colony, united in bearing testimony in his favour. The Protestant Prelate wrote thus :—

* It is due to Sir Leopold to say that he had afterwards sent home an explanation of this, which has been accidentally omitted. *Vide ante.* p. 149.

reactions in Jamaica is attributable to the promptitude, courage, and judgment with which he acted under circumstances of peculiar difficulty and danger."

And the Roman Catholic Prelate, the vicar-apostolic of the island, publicly bore similar testimony.

As regards the general opinion of the colony, it had been abundantly expressed in addresses; and the opinion of men in this country who had known the colony was the same.

All this amount of opinion, however, of those best qualified to judge, was set at nought by the Jamaica Committee, who now, under the presidency of Mr. J. S. Mill, the member for Westminster,* resolved, contrary to the opinion of Parliament, and the great body of the British public, to persist in the prosecution of the ex-Governor. Yet to all this amount of opinion they had nothing to oppose, except certain statements of fact, at variance with the Report of the Commissioners, or fallacies so palpable as scarcely to require exposure; as for instance that the negroes soon ceased their attacks (the obvious reason being that they were deterred by the terror of martial law) or that they did not dare attack regular troops, which was not true, for they *did* attack the troops ten days after the outbreak, not indeed with much determination, the reason being, however, not that the disposition was wanting, but, because, as explained by Gordon, the obvious policy of the insurgents was to wait until the troops were *worn out*. The Jamaica Committee never fairly met and faced the real danger with which Mr. Eyre had had to deal. Yet it had been eloquently described, by an eminent writer.

* Mr. Buxton had withdrawn because he could not sanction the prosecution for murder, which they had resolved on, and which he nevertheless aided to the utmost by a most inflammatory letter in the papers, and a most inflammatory speech in the House. *Vide ante*, p. 233 and p. 249.

When it became obvious, after the lapse of well-nigh a year, that this course was to be persisted in by the assailants of the late Governor, an illustrious writer—Mr. Carlyle—made this appeal to public feeling on his behalf on the occasion of the formation of the Eyre Defence Fund Committee, which, he it observed, did not take place until, for nearly a year, he had been thus assailed :—

“The clamour raised against Governor Eyre appears to me to be disgraceful to the good sense of England ; and if it rested on any depth of conviction, and were not rather (as I always flatter myself it is) a thing of rumour and hearsay, of repetition and reverberation, mostly from the teeth outward, I should consider it of evil omen to the country, and to its highest interests, in these times. For my own share, all the light that has yet reached me on Mr. Eyre and his history in the world, goes steadily to establish the conclusion that he is a just, humane, and valiant man, faithful to his trusts everywhere, and with no ordinary faculty of executing them ; that his late services in Jamaica were of great, *perhaps of incalculable value, as certainly they were of perilous and appalling difficulty—something like the case of ‘fire,’ suddenly reported, ‘in the ship’s powder room’ in mid ocean, where the moments mean the ages, and life and death hang on your use or your misuse of the moments* ; and, in short, that penalty and clamour are not the thing this Governor merits from any of us, but honour and thanks, and wise *imitation* (I will further say), should similar emergencies rise, on the great scale or on the small, in whatever we are governing !

“The English nation never loved anarchy ; nor was wont to spend its sympathy on miserable mad seditions, especially of this inhuman and half-brutish type ; but always loved order, and the prompt suppression of seditions ; and reserved its tears for something worthier than promoters of such delirious and fatal enterprises who had got their wages for their sad industry. Has the English nation changed, then, altogether ? I flatter myself *it* has not, not yet quite ; but only that certain loose superficial portions of it have become a great deal louder, and not any wiser, than they formerly used to be.

“At any rate, though much averse, at any time, and at this time in particular, to figure on committees, or run into public noises without call, I do at once, and feel that as a British citizen I should, and must make you welcome to my name for your committee, and to whatever good it can do you. With the hope only that many other British men, of far more significance in such a matter, will at once or gradually do the like ; and that, in fine, by wise effort and persistence, a blind and disgraceful act of public injustice may be prevented ; and an egregious folly as well—not to say, for none can say or compute, what a vital detriment throughout the

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British empire, in such an example set to all the colonies and governors the British empire has !

“Further service, I fear, I am not in a state to promise, but the whole weight of my conviction and good wishes is with you ; and if other service possible to me do present itself, I shall not want for willingness in case of need. Enclosed is my mite of contribution to your fund.” (Mr. Carlyle’s Letter, 23rd August, 1866.)

It is given to an historic genius such as that of Mr. Carlyle to see far more clearly and quickly, and to put far more forcibly and powerfully than ordinary minds are capable of, the real character of an event in the history of a country ; and a single sentence in this striking letter expressed with more power and truth than a volume of elaborate exposition, the terrible and formidable danger which Mr. Eyre had to meet and to encounter. And, as already more than once observed, the *realisation of this danger lies at the root of the whole matter*. All the censures or reproaches cast upon Mr. Eyre had proceeded from a *failure* to realise it, and, therefore, this great writer seized *that* as the real point of the case ; and that it was the point of the case must now be manifest, though it had been and still was persistently misrepresented or ignored.

The whole course of the assailants of Mr. Eyre in their criminal prosecutions as in the Parliamentary discussion, was to *ignore* this, the real point in the case. This was, indeed, particularly and persistently displayed in their conduct of the prosecution ; and it showed most strongly their consciousness that Mr. Eyre could not be successfully assailed on the real facts of the case as a whole, but only on false facts, or on a part of these facts. It will have been observed that the learned judge, in his lucid explanation of the law, in the Provost’s case, very clearly pointed out that the issue upon a trial for murder, even although, as in that case, he was the actual perpetrator, or the personal director of the act of homicide, would not be merely strict legality, nor even *absolute* necessity, but, in substance, *honesty*, or an *honest belief* in its necessity or legality. Assuming

an honest belief in the necessity, there was sufficient colour of authority afforded by the office of Provost-marshal to relieve the act out of the character of wilful illegality. And the learned judge was well aware that on an indictment for murder, which alleges that the accused wilfully and feloniously—*i.e.*, *wickedly*, for it is so interpreted in the old indictments—and with malice aforethought, did kill and murder the deceased,—he well knew that this required *some* bad motive or bad feeling. He therefore throughout put the case upon the question whether the prisoner had acted wantonly in wicked recklessness of human life, and with no real belief either in the legality or necessity of the act, and, merely under *colour* of his office, did a wicked murder; or whether he acted honestly and in the belief of his authority and of the legality or necessity of his act. The same *general* principle would apply to the case of the Governor or military commander in maintaining or carrying out martial law, with this great difference, however, that such an officer having the charge and care of a large district, and, indeed, in the case of the Governor, the whole colony, the range of materials for his judgment would be as large as the scope of his responsibility, and his judgment, especially that of the Governor, would have to be formed upon all the facts and circumstances known or believed as to the general condition of the district or the colony, and not, as in the case of an inferior officer ordering an execution summarily and without orders, upon the present imminent circumstances of the particular spot and the exigencies of the particular moment.

This consideration, it might have been supposed, would have precluded any criminal prosecution in the case either of the Governor or military commander, or would have dictated, at all events, some regard to the many requirements of justice in such a case, *viz.*, to present as far as possible all the facts and circumstances of the colony to the

tribunal, and not to hold the officer criminal. Both the Governor and military commander, however, were criminally prosecuted, and the prosecutions against them were conducted upon the very opposite principle, viz., that of presenting the narrowest possible state of facts, and confining the evidence, as far as possible, to the circumstances of the particular spot and the particular moment! It seems scarcely credible, but it is a simple fact, that prosecutions for murder against the Governor and military commander of a colony, for the execution of a man under martial law, should seriously have been conducted, opened, pressed, and persisted in, upon the miserably narrow ground that there was no disturbance, at the time, at the particular place where the execution occurred! Yet, literally and truly, this was the sole piece of evidence offered in either case to prove that the execution of martial law was not necessary, viz., that at Morant Bay, where the execution took place, there had been no further disturbance, as there could scarcely have been, seeing that the place was in the occupation of troops, and the rebels had all fled elsewhere!

It only shows the wretchedly narrow grounds on which the whole views of the prosecutors rested, that they should have founded their criminal proceedings against the Governor and military commander of a colony, *not* upon the real condition of the whole district or the entire island, but on the circumstances of the particular place, at the precise point of time when the execution occurred. The same narrowness of mind which suggested such a notion could alone have inspired the hope that any tribunal composed of independent gentlemen of England, whether unpaid magistrates or grand jurors, could ever entertain such prosecutions, which were openly derided in the profession and declared preposterous in Parliament. But the delusions of partisanship are wonderful, and there were sanguine hopes entertained of success; and what is more,

such had been the force of the influences and prejudices exerted, that success would have been attained but for the invaluable institution of the grand jury. And among the many lessons to be learnt from these proceedings, not the least important is the value of that ancient and independent tribunal, the sole barrier against an unjust and pernicious prosecution.

Prosecutions were afterwards instituted or attempted against the Governor and military commander, and it is important to direct attention to these prosecutions, and to the mode and spirit in which they were conducted, as illustrative both of the results and the causes of the agitation which had been created upon the subject. The legal prosecutions, like the Parliamentary discussions, were partly the result of the agitation, and they were also, in part, a great cause of its continuance, and, there is too much reason to believe, were equally parts of the same system pursued with that object. The discussions in Parliament, in which the leading prosecutors took part, were brought in as a prelude to the prosecutions, and the prosecutions were so conducted as to carry out the views embodied by the prosecutors in the debates, and keep up the feelings they were calculated, and no doubt intended, to excite. The prosecutions in the first place attempted—prosecutions for the murder of Gordon—were so monstrous and preposterous, that even Mr. Buxton, the chairman of the committee, had withdrawn rather than sanction them; and it is difficult to believe that any one could ever have really considered that they would succeed. And as the mode in which they were conducted was powerfully calculated to keep up and increase the great influence on public feeling which the prosecutors had obtained, it is not unfair to suppose that this was the main object in view. There was an entire identity in purpose, in spirit, and in conduct, between the prosecutions and the part taken in the debates by the chief of the prosecutors. Mr. Mill, the new chair-

man of the committee of prosecutors, had delivered a powerful speech in the debate, calculated to produce a great effect against the Governor of Jamaica by representing the case of that colony as identical with that of England, and so exciting an immense prejudice against the exercise of martial law in the colony on account of the supposed power it implied to exercise it in the same way in this country (as if by any possibility the pretence for it could ever arise); and a powerful advocate,* a man singularly adapted for such a work, by reason of family traditions and personal connexions, by natural gifts and acquired abilities, was retained to enforce the same views, as counsel for the prosecution, and he did so in a series of able and elaborate speeches, delivered before the magistrates, and circulated through the country, not only in newspaper reports, but in separate publications.† It is obvious that the speeches of an able and ingenious advocate thus circulated would be calculated to produce a great impression, and that repeated prosecutions would afford opportunities for them of which advantage was taken to the utmost, and the speeches of counsel in the courts were made use of to keep up the impression already created in the debates in Parliament.

The prosecutions for murder which were in the first place attempted, were rested on the same narrow and one-sided basis on which the case against the assailants had been all along rested, either in or out of Parliament, that martial law was restricted to resistance or suppression of

* Mr. Fitzjames Stephen, the son of the late Sir James Stephen. The son of such a man, doubtless inheriting the views of his distinguished father, would be, it is manifest, the fittest exponent of the views of the prosecutors, and his natural gifts and acquired abilities equally concurred in enhancing the fitness of the selection, blending, as they did, a Johnsonian vigour of intellect, a mind well trained and cultivated by scholarship enriched, by extensive reading, and exercised by many literary labours, together with no ordinary forensic power. It may be supposed that the speeches of such an advocate, on such a subject, would have great force, and Mr. Stephen in the courts was an able coadjutor of Mr. Mill in Parliament.

† Edited by Mr. Shaen, the able solicitor for the prosecution.

actual insurrection ; that there could have been no necessity for the execution, because actual insurrection was at an end, and that therefore the real reason for it must be sought in a desire to get rid of the man, irrespective of any real necessity. This being made the main ground for the prosecution for murder, which, it was admitted, required *some* improper motive, it is manifest that the prosecutions could not possibly determine anything as to the legality of martial law ; so that this, which was the reason assigned for them, could not have been the *real* motive, while, on the other hand, it is equally obvious that such prosecutions would afford unbounded scope for insinuation or suggestion of bad motive, tending powerfully to prejudice the public mind. If, indeed, the prosecutions had been fairly conducted with reference to the *whole* of the facts, even those put in *evidence* by the prosecution, although these formed a mere *fragment* of the real facts, as ascertained and authenticated by the Royal Report of the Commissioners, it would have been seen that for such a case there was no real foundation, and for this reason, no doubt, the evidence for the prosecution was restricted within the narrowest possible compass. Thus again, while it was in perfect harmony with the one-sided view and course taken by the assailants of the authorities from the first, was a course perfectly inconsistent with any real desire to promote justice or to settle the law, and therefore conclusively shows that *such* could not have been the object of the prosecutors. With such objects, it is manifest that they would have selected a case for prosecution free from any peculiar or exceptional circumstances calculated to excite prejudice, and would have aided to the utmost in getting all the facts as fully as possible in evidence ; whereas in both respects the opposite course was pursued, and the case selected for prosecution was, from peculiar and exceptional circumstances, an extreme one, and calculated to excite great prejudice, so that a conviction, if obtained,

would not be satisfactory, nor in the least settle the law ; and in prosecuting their case they did their utmost to exclude any evidence except such as would *criminate* the accused authorities, keeping out of their case as much as possible everything that would tend to exculpate or to excuse. Considerations of some importance may suggest themselves to the mind as to whether this was a proper course to be pursued, especially by a public body, whose combination for the purpose of prosecution and of agitation against the parties prosecuted had given them already eminence and unfair advantages ; but as it is not desired to make reflections upon the conduct of these gentlemen otherwise than is actually necessary for the purpose of a history, these considerations may be left to their natural weight and influence in the minds of those to whom they may occur. It is, however, extremely important to bear in mind the narrow and one-sided spirit in which these prosecutions were conducted, as showing in the strongest way that the prosecutors were conscious that, on the *real* facts and on the *whole* of the facts, the accused authorities were not culpable ; for if they had *not* been conscious of this they would have based their prosecutions on the broadest instead of the narrowest foundation of facts, and would have boldly challenged the course taken on the *whole* of the *real* facts, already ascertained and authenticated in a Report of Royal Commissioners.

For it is to be observed, that these prosecutions were instituted under circumstances in this respect extremely peculiar and exceptional, and, indeed, wholly unprecedented ; that there had already been a protracted inquiry before Royal Commissioners, by whom the accused authorities had been repeatedly examined, and whose examinations could be, and accordingly were, given in evidence against them. There can be no doubt that the Commission had been originally demanded *with a view* to criminal prosecutions, and in order to obtain admissions which might afterwards be

used against the authorities. This being a course entirely unusual, and, *with such an object*, quite unconstitutional, the only palliation for it would have been that at all events the *whole* of what the parties had said should have been put in, especially as the truth of the *whole* had been attested by the Commissioners' Report; but so anxious were the prosecutors to rest their case on the narrowest possible basis, that there was great *difficulty* made as to this in all the prosecutions, and they desired to put in the statements of the accused so far as the statements apparently *made against them*, keeping back what would be relied upon in their favour. There was no *intentional* unfairness in this, because it was the result of the narrow and one-sided view taken of the whole subject by the promoters of the prosecution, who *assumed* that martial law was wholly unlawful, and then took for granted that they were entitled to throw the onus entirely upon the accused of defending what they had done. But they forgot that their avowed object was to settle or test the *law*, and that this could not possibly be done upon a partial or imperfect view of the facts, but only on the *whole* of the *real* facts, as nearly as possible, as they had been ascertained and authenticated. And they further forgot that, as they had already had the immense advantages of a prolonged agitation and a protracted inquiry, they were bound in fairness to afford the accused the benefit, at all events as far as they could, of all the facts as thus ascertained and disclosed. And they were bound to see that upon the *whole* of the facts there was no pretence for any *imputations* upon the accused, and that the *whole* facts raised a question of legality or illegality which they might fairly *thus* have presented to a court of law. Instead of this, they sought rather to rest their case against the accused upon *imputations* raised, *not* upon the whole of the *real* facts as disclosed, but upon a *portion* of them.

As, however, it was of course ruled that they could not

be permitted to put in the examinations of the accused against them without putting in the *whole*, at all events so far as they were evidence, much more of the real facts got into the case presented than the prosecutors intended, and enough to *destroy* their case altogether, the best proof of which is that in the speeches of their counsel, *the main and most important facts they disclosed were entirely ignored*. Still the facts thus disclosed fell far short of the whole of the *real* facts as disclosed by the Commissioners, and to the extent to which they so fell short there was an obvious injustice done to the accused, and the strongest evidence afforded that the object of the prosecutions was not to promote justice or settle the law, but to *excite prejudice, and thus deter others from exercising the law on future occasions*. And this was in effect avowed or implied in the manifestoes of the prosecutors.

The prosecution which was first commenced or attempted was that of the military commander (Colonel Nelson) and the president of the court-martial, for the murder of Gordon. It was not commenced until February, 1867, just a year after the Commissioners had concluded their inquiry, and *nearly* a year after they had presented their Report. During the whole of that period the prosecutors (who had sent counsel to Jamaica to attend the inquiry) had been in possession of the real facts, and had enjoyed the most ample opportunity of acquiring a mastery of them, and also of agitating the public mind by speeches and publications against the accused, and with these enormous advantages they now prosecuted the military commander and president of the court-martial upon *such facts as they chose to select*. The case selected was that of Gordon, who, as has been seen, on the 17th October, a few days after martial law, had been arrested by the orders of the Governor, *on the suggestion of the Commander-in-chief*, and sent into the declared district, with instructions to the military commander to examine the evidence and *see if*

*there were sufficient grounds for his trial by martial law, and who on this examination had been, under the orders of the military commander, tried (in effect) for inciting the insurgents to insurrection, and so causing the insurrection within the district, and being convicted, with the approval of the military commanders, was under their orders executed, the Commander-in-chief and the Governor concurring in the opinion that the execution was necessary. Now upon this brief statement of the ascertained and authenticated facts it will be obvious that to any dispassionate and intelligent person, lawyer or layman, it would be manifest, on a little reflection, that whether martial law was legal or illegal, in any case there could be no culpability in the military commander or the Governor, for they had evidently acted in accordance with the opinion of the Commander-in-chief that the trial and execution were at once lawful, just, and necessary, and this was an authority paramount to the one and independent of the other. If it was lawful, the trial determined that the accused was liable for causing the insurrection, and so was amenable to martial law, and therefore removable to be *made* amenable; and even assuming martial law to have no legal existence, then, as it had no legal existence anywhere, the removal into the declared district would be immaterial, and the question would resolve itself into one of necessity, or rather of honest belief in it, while if it *had* legal existence, then the removal would be *lawful*, seeing that it is a universal principle that a man is liable to the law in force in the place where he has done, or *caused* to be done, an act amenable to such law, and that he may be lawfully removed into that place in order to be made so amenable. Whether, therefore, martial law was legal or illegal, the trial and execution could not be culpable: because an authority paramount to that of the military commander, and independent of the Governor, that is, the Commander-in-chief, an old and experienced officer, not only not under the*

influence of the Governor, but, as it happened, at variance with him, considered the execution lawful, just, and *necessary*, for he not only approved but stated that in his opinion at the time, looking to the circumstances of the colony, "the case called for prompt and decided action," *i.e.*, for a prompt execution of the sentence (Evidence of General O'Connor). It was manifest then that whether martial law was lawful or unlawful, and whether in point of *fact* the execution was or was not absolutely necessary, neither the military commander nor the Governor could be culpable, seeing that this high authority, paramount to the one and independent of the other, *considered* it was lawful, *considered* it was just, and *considered* it was necessary. For he originally *suggested* the arrest, he *approved* of the trial and execution under the orders of the commander subordinate to himself, he concurred in the sentence, and he was of opinion that the state of the colony called for its prompt execution. It was manifest that the possibility of culpability was entirely excluded by the view taken by the Commander-in-chief, and that even if the question was whether his view was right or not, which could only arise on a prosecution against *him*, the question would depend not upon the state of the particular place where the man was executed, but upon the general state of the whole district, and of the entire colony. No *pretence* of a case could possibly be made against either the military commander or the Governor, if the part taken by the Commander-in-chief in the matter was fairly put forward, and especially these two important facts: that he first suggested the arrest with a view to the trial, and that *he* not only approved the conviction and sentence, but was of opinion that the state of the colony called for its prompt execution. And accordingly in the case for the prosecution these decisive facts were kept out of sight, and also, as far as possible, the state of the colony; and the case rested on the common ground that there had been no

further disturbance at the place where the *execution* occurred, and it was put as if the execution had been entirely the act of the military commander and the Governor, whereas in truth and in fact, as appeared from the authenticated facts, it was not really and morally the act of *either* of them; for the Governor did not order or cause or direct it; and the military commander only ordered it under the authority of his superior commander, and *both* of them acted in reality upon or in accordance with the views of that superior commander, a man of experience and high standing, whose opinion either upon the *legality* of martial law or upon the *necessity* for its exercise in the particular case, would be reasonable ground on which to act, and so would take away all culpability in the Governor and military commander.

This most important feature of the case was kept out of sight, and, as far as possible, all the facts on which the case turned were kept out of sight. It was impossible to exclude the letter of the military commander to the Commander-in-chief:—

“After six hours’ search into the documents connected with the case of Gordon, I came to the conclusion that I had sufficient evidence to warrant my directing his trial. * * * The sentence was death. I considered it my duty to fully approve and confirm. To-morrow being Sunday, and there existing no *military* reason why the execution should not be deferred, I have preferred to delay its execution till Monday morning at eight o’clock. I enclose the whole of the proceedings for *your* information, as you may desire to see what evidence led to the conviction of so great a traitor. I have not furnished any report to the Governor because I apprehend that all my reports should be made through yourself, *my immediate commanding officer*. Hoping to gain your approval, &c.”

And as it was part of Colonel Nelson’s statement it was impossible to exclude the letter of the Governor to him:—

“Your report has just reached me *through the General*, and I quite concur in the justice of the sentence and the *necessity* of carrying it into effect.” (Minutes of Evidence, p. 621.)

And the plain effect of these communications was that

the military commander thought the *prompt* though not instant execution of the sentence was *necessary*; that the *General* concurred in this view, and that the Governor, *upon the authority of that opinion*, also concurred in it. It was, however, actually contended that the letter showed that as there was no necessity for *instant* execution, there could have been no necessity for the execution at all; which was also contended from the fact that there had been no further disturbance at the particular place, the scene of the execution; and the fact that the Commander-in-chief was at the time of opinion that the circumstances *of the colony* called for *prompt* action in the case, *i.e.*, for *prompt* execution, was not mentioned, that is to say, the fact which was *decisive* against culpability in the parties prosecuted was kept out of sight.

It was manifest that the whole case of the promoters of the prosecution, in the prosecutions, as in the Parliamentary discussions, rested upon the theory that martial law was illegal in any other sense than as the mere resistance to actual outrage or repression of actual insurrection, in which sense it would be nugatory, as for these purposes it is not necessary. So that the case rested upon the assumption that there could be no necessity for measures repressive of a *rebellion*, but only of a *riot*. This is what it really came to. And it is most important to bear this in mind, because as that was the view taken by the assailants of the authorities throughout, if this view is erroneous it is manifest that the Governor was condemned upon a *false view of the law*, and that *it is* erroneous is now established. That the case of the prosecution was based upon this view was manifest from this, that the only evidence they gave to show the execution *not* necessary (which of course it was for them to show), was that there had been no actual resistance to the troops, nor any further outrage or disturbance at *Morant Bay*, the scene of the execution, or its neighbourhood. And it was avowed also in the speeches

of the counsel for the prosecution, who admitted the right of execution upon a case of necessity, which he said might have arisen, "if thousands of rebels had been *marching down on the particular place*, using the name and under the influence of the prisoner." Then, he admitted, the prisoner might have been executed. With all his acuteness the learned counsel did not perceive that this admission in effect conceded the whole case; for there might be just as much necessity with reference to the suppression of a *rebellion* when thousands were marching down upon the small part of the population exposed to their attack, in any other places, or were *ready* to rise upon them in a hundred places if not prevented by deterrent measures, for of course men called upon to act can only act upon their judgment at the moment, so that necessity really means reasonable judgment of it; and this *was* the opinion of the Commander-in-chief, the highest military authority in the colony, which of itself was sufficient evidence of what was reasonably necessary, for which reason probably it was kept out of sight, as also were as much as possible all the circumstances of the colony on which this opinion was founded. It was indeed impossible to prevent its coming out that there were about 450,000 blacks in Jamaica and about 13,000 whites, a disproportion of about 25 to one, and that the whites were everywhere *scattered* among the blacks, *i.e.*, one white person amidst twenty-five blacks. It further came out (though it was attempted strenuously to exclude it) that the military commander had only 453 men in the vast district the scene of rebellion; a district comprising some 600 square miles, and a black population of 40,000, among whom, as the Commissioners had reported, the rebellion had spread with singular rapidity, and amidst a vast population of 450,000 of the same race and blood. That is to say, 450 to keep down a rebellion among a population of 450,000. A rebellion which had *actually* broken out and spread rapidly among a portion of the population, 40,000 in

number, and which was likely at any moment to break out again and spread as before with singular rapidity, and if it did, would rapidly overwhelm the entire colony. These tremendous facts could not be prevented from coming out, and they alone, taking the fact of the rebellion, would have amply supported the opinion of the Commander-in-chief that the then circumstances of the colony called for prompt and decided action in the case. But then again as to the *rebellion*, although the whole truth had been authentically disclosed by the Report of the Royal Commissioners, as little as possible was presented in the case for the prosecution, and as much as possible excluded. It could not be kept out that there had been a "disturbance," to use the cautious phrase of the Commissioners, who, however, had disclosed facts showing that, as they themselves stated, it was a *planned resistance* to lawful authority, with the *object of the extirpation of the white population*. That is a rebellion, and a rebellion which was a war of race. And a war of race, which had broken out among a black population of 450,000, against a white population of 13,000, and with 450 soldiers for its suppression. These were authentic, recorded facts. But the prosecution would not admit more than a mere riot or disturbance. They would not admit a formidable rebellion, as the Commissioners had reported.

What could more strongly show that they were quite conscious that if there was a formidable rebellion, and a real danger, then (as Mr. Buxton had in effect admitted in the debate), not only the particular execution would be justified, but it could not be said that there had been any serious excesses, at all events allowed or authorised? They admitted a riot, however, but would not admit a rebellion. Yet, according to their view, they might safely have admitted it; and that they should have shrunk from so doing shows that consciousness of the *weakness* of their view which involved them, as has already been

seen, in hopeless inconsistency. For, according to *their* view, nothing more could be done under martial law for the repression of the rebellion than in the repression of riot. This, indeed, was their fundamental fallacy, that they confounded riot with rebellion, and allowed no other or stronger measures for the repression of rebellion than of riot. This was shown both in the evidence they offered and the views urged in the speeches of their counsel. Their evidence was, that there was no resistance to the troops, no men in arms, that is, in the particular place; elsewhere, as has been seen in the Report, insurgents were in the field on the very day of the trial, ten days after the outbreak. And the view urged by their counsel was that which such evidence indicated, that it would be lawful to attack men in armed riot or actual insurrection, but not to *execute* any one, at all events unless *taken* in arms in the field; a view afterwards adopted by the Lord Chief Justice, who entirely followed the counsel for the prosecution in their view of the case. With this view, of course, it did not matter how terrible had been the original outbreak, or what evidence there was of its origin in rebellion, or of the formidable nature of the danger thus indicated, because, according to this view, no state of rebellion, however formidable, no amount of danger, however great, would justify deterrent measures, *i.e.*, the punishment of rebels or leaders, in order to deter others, and only those taken in *actual insurrection* can be executed. Then why did they not fully and frankly admit the rebellion, and the danger, as described by the Commissioners? Plainly because they distrusted their own theory, that nothing was lawful but resistance or repression of actual armed riot or insurrection. And accordingly, with obvious inconsistency, the counsel for the prosecution felt compelled to admit that, "if thousands had been marching down upon the place under the name and influence of the prisoner," then Gordon's execution

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would have been justifiable. What was this but admitting that the execution of a party, even for inciting to rebellion, may be justified by *danger*? The particular definition or illustration of danger was a narrow one, but the *principle* would be the same with a larger and broader idea of the nature of danger. Suppose, for instance, not thousands, but tens of thousands *ready* to rise everywhere and overwhelm and massacre the few whites scattered among them? *That* would be as great a danger, if not greater; and there was abundant evidence of such a state of things in the evidence taken before the Royal Commissioners, and the opinion of the Commander-in-chief, that the then state of the colony called for prompt and decided action in the case. Keeping that opinion out of sight, and ignoring the whole of the evidence on the subject, the prosecutors merely giving evidence that there was no disturbance at the particular place, insisted upon treating the case as one in which there was no *necessity* for the execution!

And then the case was put as a claim to exercise martial law without any necessity for it, and as a claim to exercise it in England as it was represented to have been exercised in Jamaica. That is to say, with great forensic dexterity it was first laid down, that martial law only authorised all that could be *likely* to be necessary in England, viz., suppression of riot. Then all the circumstances which made far *more* than this necessary in Jamaica were as far as possible kept out of sight, and it was represented as a claim to do in Jamaica what could not be necessary in England, and to do in England all that had been done in Jamaica. Ignoring all the circumstances which made a formidable danger and terrible necessity in Jamaica, it was represented that as the law in Jamaica was the same as in England, and that which was not likely to be necessary in this country could not be necessary in the colony, and therefore that what had been done in Jamaica was no more necessary there than here, the claim to do

it there was a claim to do it here. This was a pursuance of the course taken by the assailants of the authorities throughout, with the obvious design of exciting a violent feeling against them in this country, although the least degree of candour would have admitted what even the meagre evidence in the case disclosed, that the circumstances which had arisen in Jamaica were such as could not arise in this country; so that it was pedantry or something worse to pretend to draw any parallel between the two countries in this respect. Nevertheless, the whole case for the promoters of the prosecution in the courts, as in Parliament, was rested on the assumption of this entire identity, not only of the law, but of the circumstances, of this country and the colony.

This view was not only avowed throughout by the able advocate of the prosecution, but was made at the outset the only avowed motive or reason for the prosecution. Having mentioned that Mr. Mill was prosecutor, he said :—

• “It was one of the peculiarities—perhaps the greatest peculiarity—of the criminal law of England, that it could be set in motion by any private person who considered either that those in whom he was interested had been wronged, or that the public interest required that any one should be criminally prosecuted. In these circumstances, when any person believed that a great public wrong had been done, and that a *precedent had been set up*, which would, if it were allowed to pass unquestioned, seriously imperil the life and liberty, (and he used these words advisedly,) of every man in the British Empire, whether in this country or elsewhere, he (Mr. Stephen) conceived that those who thought so not only had a constitutional right, but were under a public duty, to use those powers which the law had intrusted to them to bring the offender before a court of justice.”

So that it was actually gravely insisted that the execution by court-martial of the supposed author of a negro rebellion, in a colony where the negroes are to the English as nearly thirty to one, and a rebellion with a view to the extirpation of the whites, would be a *precedent* for similar executions in any part of our dominions, although in no other part of

our dominions could such a case *possibly* occur, and even in this country, where the idea of the possibility of it would amount to a pedantic absurdity! And not only so, but the whole case of the prosecution was avowedly based upon that view. And so it had been throughout. Summed up in a sentence, the whole case came to this: Such measures would never be necessary in this country; therefore they would never be necessary in the colony; and therefore they were criminal! It will now be seen why no mention was made of the opinion of the Commander-in-chief, "that the *circumstances of the colony* called for prompt and decided action in the case." It was put entirely as a matter between Mr. Eyre and Colonel Nelson, and, ignoring the opinion of the Commander-in-chief, it was sought to show that Mr. Eyre's view was without any support. Yet even what was in evidence admitted by counsel showed that this was not so. It was true that, as Mr. Stephen said, with generous frankness,—

"No man could have shown a more gallant determination from first to last to take upon himself every atom of responsibility that belonged to him; whatever else could be said of his conduct, no one could say that he acted otherwise than as a brave man. This he should feel bound to say, as counsel, if it were as much in opposition to the feelings of those who instructed him as he believed it to be agreeable to them, to show that they were acting in a large and liberal spirit, and without any feeling of personal malignity."

But he *acted*, it is manifest, in a great degree, upon the opinion of the Commander-in-chief.

"A letter from Mr. Eyre was put in, in which he expressed his approval of the course taken by General Nelson, and in that letter Mr. Eyre says: 'Your report of the trial of G. W. Gordon has just reached me *through the General*, and I quite concur in the justice of the sentence, and *the necessity of carrying it into effect.*'"

That is to say, Mr. Eyre *concurred with the Commander-in-chief in thinking the execution necessary*. That is the plain meaning of it; for, from receiving the

report *through the General*, approved and confirmed, he evidently assumed, what was the fact, that the Commander-in-chief deemed the execution just and necessary. In that view he concurred; and whether martial law be legal or not, this took away all culpability. It would have been quite plain that this was so, if it had been stated that the Commander-in-chief, in fact, not only affirmed the sentence, but thought the execution *necessary*. It was *not*, however, mentioned. This may have been from the view of the law taken by the prosecution, that the question was not *belief in necessity*, but *actual necessity*, or that theory may have been adopted in order to exclude the evidence of the *opinion* of the Commander-in-chief, which, of course, would be decisive on the issue of reasonable ground for the belief in necessity. From whatever reason, however, the *main fact* was kept out of sight; so it was assumed all through that Jamaica and England were identical, not only as to law, but as to circumstances and conditions, so that nothing would be necessary in Jamaica which would not be so in England.

“He should prove that the common law of England prevailed in Jamaica, except in so far as it was altered by valid statutory legislation.* The question, therefore, came to this: What does the common law of England mean by ‘martial law’? Now, whatever the law of England meant by martial law, it did not mean the power of trying a man for an offence, and putting him to death without the ordinary forms of law, *except in cases of absolute necessity, of which necessity a jury was afterwards to be the judge*. This was the vital point in the case, and the question it involved was nothing less than this: Is the law of England supreme, or is there known to the law of England some other power which, in its own discretion, can set aside the law and be supreme over it? Because, if the law of England is supreme, then the question of necessity would have to be decided by a jury in the ordinary way; and you would have to justify what you have done as being *an act necessary to be done*. In order to justify what was done in Jamaica, independently of its necessity, it would be necessary to lay down and support this proposition—that the Queen of England by the common law has power and authority to abolish the existing laws of the

* This was *not* proved, and there was a gross blunder in not noticing that the charter to the *English settlers* established the common law for *them and their descendants*.

land, repealing Magna Charta itself for one, and to substitute for them a despotism administered by military officers, with full power to put to death any person for any offence he might commit, and exempt from any subsequent responsibility to any power, except perhaps the Parliament. That, when one came to think out the matter, was the real question."

That is to say, "thinking it out" *with the omission of the tremendous difference between Jamaica and England*. Of course, keeping this out of sight, and *assuming* (what was erroneously assumed) that the law in England and Jamaica is the same upon the subject,—if what was done in Jamaica was *no more necessary than it would be in England*, then the claim to do it in Jamaica involved a claim to do it in England. But it had *only* been claimed to do it in Jamaica because it was necessary by reason of a terrible and formidable danger which could not possibly arise in England. There was utter pedantry, therefore, as well as gross unfairness, in pretending that there was any claim to do in England what had been done in Jamaica. It was only claimed to do it where necessary, and it was said to have been necessary in Jamaica on account of circumstances which did not exist in any other colony, and *could* not exist in this country.

Yet the above passage embodies the view which was put forward in the most inflammatory and exciting way by the organs of the prosecution or the journals which supported their views. It was represented *as a claim to hang men in England for mere sedition!* This is really and truly what was represented by the partisans of the prosecution and their organs in the press. Because, in a negro colony where the blacks were as thirty to one, the author of the negro rebellion, with the object of extermination of the English, was executed upon the opinion of the Commander-in-chief that his prompt execution was necessary, therefore, it was said, there was a claim to hang men for sedition in England! Anything more unfair, or more calculated to prejudice public opinion or influence popular

feeling against the colonial authorities, could not be conveyed. It was said that Gordon had only used inflammatory language, that he was merely an agitator. This was the character applied to the words such as these uttered to negroes in a colony where they are thirty to one; and within a few hours' sail of Hayti: "You must do as they did in Hayti!" This was called mere inflammatory language, because it would be so in this country, where, indeed, it would have no meaning. This, indeed, shows the absurdity of such a view, and that the same language may have a totally different meaning in different countries, under different circumstances; that which might mean mere riot or sedition here would *mean massacre* in Jamaica, or Cuba, or Hayti. And, that it *had* meant massacre, the actual facts had shown in the case of Jamaica. Yet the whole case of the assailants of the authorities rested upon the assumption of an entire identity, not only of law, but of social circumstances and conditions, between the two countries. On the contrary, the vast *difference* between the two countries had led to an *enactment* of the power of martial law to a far greater degree than would be legal in this country, because it could never, in modern times, be necessary in this country. This was well shown by Mr. Hannen (now Mr. Justice Hannen) in his argument for Col. Nelson. His whole argument was founded on the *difference* between the circumstances of Jamaica and of England, and he repudiated as absurd the reasoning based on their assumed identity:—

"Now I ask my friend how he can gravely ask you to say that these sections were intended simply to apply to martial law in the limited and restricted sense in which alone it could ever be brought into force in England while the Petition of Right remains law, and while there is no open war or insurrection—how he can gravely ask you to hold that it was intended to be used in that limited sense here, when we see that such careful provision has been made for guarding against martial law being called into requisition unless by the sanction of this great council of the community? It is perfectly obvious that it was intended to give sanction and authority to martial law in its larger sense, which, as the Act says,

has been found to be a great evil, not unnecessarily to be inflicted on the community; and the whole reason of the thing supports that construction. *Looking at the history of Jamaica, it is perfectly natural that such a power should be given. From the earliest time since it has been a possession of this country, our rule there has been subject to great dangers.* We have a curious trace of the military character of the Government in the fact that down to the present day it appears that one of the civil officers is called by the name of Provost-marshal, a title derived from the time when the occupation of the island was a purely military one. We have there a mixed population—a large number of negroes, the mixed race, the Maroons, of doubtful loyalty at times, although of late they have been true servants of the Crown, and a few thousand whites. Was it to be wondered at that the legislature of the country should have desired to invest the executive with the power, in times of emergency, of calling to their assistance the summary authority which could be exercised under martial law, but which of course could not be exercised in limited areas, and when the courts of justice were open, without the express sanction of the legislature? And, accordingly, having that in view, they gave prospective authority to the executive, with the sanction of the great Council, to proclaim martial law for that limited area and for that limited time, in the way which I have pointed out. So careful are they to guard it, that they say it shall last only for thirty days, and that in the event of its being necessary to continue it, a similar council of war shall be called for the purpose of extending that period. *Can anything be more idle* than to suppose that this authority meant,—‘You are to do nothing more than guard against instant danger’—that that was the power which it was intended to fence in and limit in such an extraordinary way?”

This fundamental fallacy, as already has been pointed out again and again, pervaded all the proceedings and all the prosecutions against the authorities, viz., that not only was martial law to be *interpreted* by what it meant *historically* at common law, that is, ages ago, when it was possible that it might be required here, but that actually it meant no more abroad—where it might be necessary—than would *practically* be necessary in this country, viz., for the mere repression of actual *revolt*. Thus the learned counsel for the prosecution stated distinctly that he concluded—

“That, except so far as it was varied by *valid* legislation of the island, the common law of England prevailed in Jamaica. That therefore the common law of England must be resorted to in order to interpret the expression ‘martial law,’ and consequently we must resort to the common

law of England to ascertain the meaning of that expression ; so that in whatever sense martial law was lawful in England, in that sense it was lawful in Jamaica ; and in whatever sense it was unlawful in England, it was unlawful in Jamaica (except so far as the express provisions of the Jamaica Parliament, being such as they were competent to make, might be supposed to vary that state of things) ; and further, that by the common law of England martial law meant a resort to military power for the suppression of revolt ; and that it did not mean, and could not mean, the substitution of a different system of law from the law already in existence in the country. In short, he contended that the proclamation of martial law was nothing else than a notice on the part of the Government that a state of facts existed which rendered it necessary to resort to the most extreme measures, by the use of military force, for the suppression of that state of things. The consequence of that, of course, would be, that whatever was necessary to be done in order to suppress a revolt was legal in itself, was justifiable in itself, and was authorised by the common law of England, and therefore by the common law of Jamaica ; and that whatever was not necessary to be done, was done in excess of the common law, and involved legal guilt and the participation in a crime. That, in general, was the view of the law for which he contended."

That is to say, therefore, that martial law in England meant only repression of actual riot or revolt, because that alone can ever now be necessary in this country ; and that, therefore, it meant no more, and allowed of nothing more, in Jamaica ! Strange that so acute a man did not perceive that the common law had authorised what *was* necessary in ancient times in this country ; and that in those times its condition more nearly resembled that of our colonies than of this country now.

"What, then, was martial law, and what were its limits ? He should proceed to state what he apprehended to be legal, and what illegal, in respect to it. Martial law was legal if you meant by it the use of military force for the suppression of revolt ; and it was illegal if you meant by it military or any other power for the punishment of crime. Great as was the difficulty of giving a complete definition of the phrase, there was unquestionably a broad line which it was easy to appreciate. That broad line he took to be this—*repression is legal ; punishment is illegal*. It was legal to put a man to death in order to put down rebellion ; it was illegal to punish a man for having by his conduct contributed to cause rebellion."

Now it will be obvious that these propositions are utterly

inconsistent ! for by the first it would be legal to punish a man for having by his conduct contributed to cause a rebellion, if that was necessary to put down the rebellion. The fallacy was in forgetting that principle upon which all legal punishments rest, *that punishment is deterrent*, and that deterrent measures may be necessary to put down a *rebellion*, though not to put down a mere riot or revolt. Out of this twofold fallacy arose the agitation against the Governor, both having their rise in a forgetfulness of the immense difference between the circumstances of this country and of a negro colony like Jamaica, by reason of the enormous preponderance of the negroes in number, and the animosities of race, aggravated by the recollection of slavery. To suppose that emancipation, in a single generation, had put an end to this, or that an insurrection of such a population was no more dangerous than a revolt or riot in the United Kingdom, was surely more than a fallacy—worse than a pedantry. And it will be manifest that upon the most egregious mistake, and the fallacies which arose out of it, the Governor was condemned.

The fallacy was one which entirely affected the view taken of the criminality of those who suffered under martial law, and, therefore, of the culpability of the authorities who sanctioned the execution. These two views, of course, were correlative, and, to the extent to which the danger was diminished, the criminality of those who had caused the rebellion and the necessity for their execution would be diminished, and in the same proportion the culpability of those concerned in their execution would be increased. Treating the matter as a mere riot or revolt, as if it were a mere local disturbance in England, of course all this would naturally follow, and the case would be governed by very narrow considerations, and these considerations were rigidly insisted upon and applied in the Jamaica case. Thus it was that the necessity for Gordon's execution was looked at by the prosecution with

reference only to the state of things at the particular place, and at the particular time, without regard to the general state of the colony. It was admitted that it would be lawful to execute persons taken red-handed, but not to execute the man regarded as the author of the rebellion, although all the authorities believed it would tend to stop it. Surely this is a *reductio ad absurdum*. For on what ground could men be executed taken red-handed, except upon the ground that it was *necessary to deter others*? And the same principle would apply *à fortiori* to the case of the man who had caused the rebellion: first, because he was infinitely more guilty; and next, because his execution would be far more deterrent. Yet it was actually, with the most obvious inconsistency, made ground of accusation against Colonel Nelson and Mr. Eyre that they executed Gordon in order to strike terror into the insurgents, and to suppress the rebellion! And this in the same breath in which it was admitted that it was lawful to execute his mere dupes—the men whom he incited to insurrection, and men taken “red-handed.”

“To execute persons actually in the commission, red-handed, of violent crimes, is one thing, but to go and take a person against whom there was only evidence that he might have said something which they thought contributed to it, and to put him to death for that, is another thing; and when we consider that Colonel Nelson not only did that—that he not only executed a man for what he had done long before the proclamation of martial law, and did it there and then, because *he thought it would strike terror into others*; to say that such a proceeding was justifiable, because he thought it advisable, is a proposition astounding.”

But surely it would be far more “astounding” to say that the poor dupes of an incendiary who has incited them to insurrection may be executed, and that the man who led them into it must be left untouched, because, forsooth, the *incitement* to the insurrection was *before* the insurrection! As if it could be otherwise!

The only answer attempted to this was that martial law not being defined in the statute, it was necessary to have

recourse to the common law to see what it meant. No doubt it was for the purpose of *construction*, but only as a *matter of history*; because in this country, as is pointed out by our great constitutional historian, the necessity for martial law, in the sense in which it was intended and required in Jamaica, can never possibly arise. There was pedantry, therefore, and worse than pedantry, in drawing any parallel between the two countries, or in pretending that an argument that martial law was allowed according to the common law established centuries ago, when there were insurrections of serfs, resembling somewhat insurrections of slaves or negroes in the colonies, meant that martial law, because *necessary* now in the negro colonies, is allowable in this country. Yet upon this flagrant fallacy the whole case for the prosecution, the whole case of the prosecutors, whether in courts of law or in Parliament, virtually rested; and it was this view alone which had effected a junction between the abolitionists and the political Liberals, and had done so much to raise a storm of public feeling against the Jamaica authorities.

It was attempted, indeed, to suggest that the colonial Act allowing martial law only applied to a state of things which existed before emancipation—an argument founded upon the abolitionist view that all the revolts of negroes were the revolts of *slaves*, and were to be ascribed to slavery; and although, unfortunately for this argument, the power to declare martial law had been re-enacted *after* emancipation, so recently as in 1854, it was said martial law in this Act only meant what it had meant before, namely, *nothing*: an argument involved in evident inconsistency; as though the colonial legislature thought no stronger measures were required for repression of a slave rebellion than for repression of a riot in England! or that, having allowed martial law only for suppression of *slave* rebellions, it had re-enacted just the same thing after emancipation! The view suggested in this argument,

moreover, that it was only negroes who were in slavery who are likely to rebel, and that they were driven to rebellion by ill-usage, is not in accordance with the history of our colonies; and the more it is maintained, and the more the necessity for martial law is based on slavery, the more inconsistent is the argument, either that martial law meant nothing more than would be necessary in England, or that martial law, if only intended for *slave* rebellions, should have been re-enacted after emancipation.

“My friend appealed to the history and position of the island, and to the great danger which he said existed. In reply I have to remind you of an observation I made before: that before emancipation, the whole of the white population were in the character of a garrison—liable to be called out for military duty. The brown and black populations were regarded as their property. By the Act of Charles II., about which so much has been said, the whole property of the country—and especially and by name the negroes—were put at the disposal of the Government, when by a proclamation of martial law the whites were all put under military discipline, and the blacks were placed under the power of the Governor. Those words and provisions are repeated verbatim in the Acts that were passed subsequently. That state of circumstances has ceased, nor can it be expected to return. My friend made observations about those great dangers of which so much has been said, which arose out of the odious and cruel tyranny which was exercised over the whole slave population; but the legislature has declared that these dangers have been removed by the fact that the ordinary rights of freemen have been restored to them, and that thereupon they became free subjects of her Majesty, whom no one has a right to disturb or treat otherwise than in accordance with the rights of all her Majesty’s subjects.”

It would be hardly worth while to notice an argument involved in such evident inconsistency, were it not that it received the sanction of the Lord Chief Justice in his subsequent charge in the case. The notion that negro rebellions have been always *slave* rebellions, is simply an historical error. The notion that negro rebellions are no more dangerous than riots in this country, is a pedantry.

Surely it may be said, without disrespect, that the fundamental fallacy pervading the whole case against the authorities, involved it in utter technicalities and down-

right absurdities ! Yet this was the view upon which, in this matter, Mr. Eyre has been condemned. The contrary view was thus sensibly put by Mr. Hannen (now Mr. Justice Hannen) the junior counsel for the Crown, who appeared for, and advised the Government :—

“It is said that the alleged offence was committed before the institution of martial law. What can that have to do with it ? *The question they had to determine was this, whether or not Gordon was a person who had assisted in bringing about a rebellion, and it makes not the slightest difference in the world whether he was a conspirator in bringing about that rebellion, or whether he was engaged in it at the time when it actually broke out.* The question was one of fact, whether or not the acts he did, and the words he spoke, were intended to have the effect of bringing about an open insurrection. He was as completely responsible for the acts he did, and the words he spoke having such a result, although before the proclamation of the martial law, as a man is answerable who sets fire to a slow match which does not explode the magazine until some hours after he has set a light to it. That was the question they had to discover. He was charged with having by his inflammatory speeches, and by his acts, brought about the insurrection which led to the proclamation of martial law, and which I say led to the institution of this court, empowered to exercise summary justice. The acts done by persons who were set in motion by him, and who, upon this hypothesis, were only the instruments of his evil intentions, he would be just as much answerable for, as if he had been bodily present at the burglaries, murders, and arsons which are referred to in the evidence.”

This was the language of common sense, of common justice, and of common law ; for the law of England holds a man liable for all the natural consequences of his words and acts ; and if they cause mischief to others ; and *are calculated to do so, he is liable.* And as to murder, if he has used language calculated to incite men to murder others, and they do so, *he is liable for the murders.* This was the view on which Mr. Eyre, with the concurrence of the Commander-in-chief, acted, and for this he was condemned.

It was admitted that as Gordon had been seen among the insurgents on the occasion of the massacre he might have been executed ; but as he only *caused* it, and took care to keep away from the scene, why his execution was criminal, however honestly intended ! It seems so in-

credible that so monstrous an inconsistency and injustice should have been maintained, yet as it *was* maintained by the counsel for Mr. Mill, and was *adopted by the Lord Chief Justice*, it may be of importance to cite the words used by the learned counsel; and it is necessary, however painful, to add that there is *another* reason for quoting them—viz., that their tone of fairness and moderation *contrast* in a striking manner with the tone of the Lord Chief Justice. He thus put the case:—

“I desire it to be clearly and distinctly understood that they acted as I believe without personal malice against Mr. Gordon, in the common and usual sense of the word, and that they were under *impression that what they did was a legal act; the whole of their conduct shows that they supposed* (but, as I say, wrongly supposed,) *that the act they did was legal.* But that their act was one altogether free from moral blame, that it was an act right in itself—that is a very different proposition, which I carefully guard myself against. I do not accuse them of having killed a man in order to gratify any of those private grudges which lead to assassinations such as you are sometimes occupied in investigating; I do not accuse them of petty personal spite; I do not deny that they thought they had a legal right to do what they did; but what I do say is, that they took away a man's life in a tyrannical and oppressive manner—under circumstances which neither legally nor morally justified what they did—under circumstances which may be explained indeed, and which to some extent may be palliated by the difficult circumstances in which they were placed, but that they did that which they never ought to have done; they did that which, I say, however legally it may have been done in appearance; although they may have acted with the instincts of gentlemen and officers; however patient Mr. Gordon's trial may have been; however humane personally they may have been,—nothing can justify this fact, that they took him and hanged him, put him to death publicly, not for having been engaged in any murder or arson, or burglary or riot, but because they thought he was a mischievous agitator, whose language had led, in their opinion—however remotely—to the unfortunate event which happened at Morant Bay.”

That is to say, in other words, that though it would have been quite right to hang him if he had been one of the poor ignorant creatures who had been led by his language into the insurrection, or if he himself had been seen on the spot, yet it was tyranny and oppression to cause him to be

executed for having led them into it, and for having caused the insurrection by language *calculated* to cause it, and therefore *intended* to cause it, even although it was honestly believed that his *execution* would tend to deter others of those poor ignorant creatures from persisting in or renewing the rebellion ! This it will be seen was avowed as the ground upon which the execution of Gordon was impugned ; and it may be borne in mind that this was beyond all doubt the *main* cause of the agitation against Mr. Eyre, and the main cause of the excitement of public feeling against him, under the influence of which he was censured and recalled. He had avowed and acted upon the *contrary* view, and for *that* he was condemned ! There were a number of minor errors, more or less important, most of them, however, emanating from the fundamental fallacy—forgetfulness of the difference between a distant negro colony and this country. For example, it was boldly said that the court-martial was illegal, because composed only of three officers of *both* services, although the Mutiny Act expressly provides, *on account of the position of a distant colony*, that such courts shall be sufficient, and shall be empowered to inflict capital sentences. This is a curious illustration of the errors arising from forgetting the difference between a distant colony and the mother country, and it is the more remarkable as the error was implicitly followed by the Lord Chief Justice ! Again, it was over and over again urged that rebels, if “civilians,” could not be liable to martial law. Yet it was admitted that “civilians” taken in arms or “red-handed” might be so dealt with, the obvious reason being that by taking up arms they became soldiers. And it was forgotten that, if this is so of the mere ignorant mob who take up arms, it is *à multa fortiori* true of those who are their leaders. If the rebels are liable to be treated as soldiers, surely their leaders are, and not the less so because they keep out of the field !

However entangled in the legal fallacies ingeniously constructed by the able counsel for the prosecution, the magistrate committed the officers for trial on the charge of murder, not because he thought they were guilty, but because he was in doubt whether the act was not perfectly legal, and he thought that this doubt should be settled by a trial for murder—a view which might be pronounced extraordinary, were it not that it afterwards received the sanction of the Lord Chief Justice of England, whose charge in the case was one of the most remarkable features in the history of these events.

Elated by the committal of the military officers, the prosecutors next attempted a prosecution of the Governor upon the same charge.

They first, however, waited a month, to have the advantage of the circulation of the reports of the able speeches of their counsel in the previous case,* and then, when they hoped that these speeches had produced their natural effect upon the public mind, they proceeded to the prosecution of Mr. Eyre.

On the 25th March, 1867—about a year after the inquiry closed before the Royal Commission; a year and a half after the unhappy events in question—a prosecution was commenced against Mr. Eyre for murder. It was commenced at Market Drayton, in Shropshire, where he had been residing for several months—where, of course, it might have been commenced long before. It was afterwards said that the reason why there had been no prosecution before was that he was not residing in a district where there was a professional or paid magistrate; as if the case could not be trusted to the independent unpaid magistracy of England—very much the same class as that from which the grand juries are formed, before

* There were three of Mr. Stephen's and only one of Mr. Hannen's, and Mr. Stephen had the reply, of which he made great use, and his reply was very powerful.

whom the case must ultimately come—and could only safely be carried before paid magistrates, supposed to be more servile to influences—more likely to be affected by a popular agitation. But more than one assize had intervened since the Report of the Commissioners, and in whatever county Mr. Eyre resided, the case could have been brought before a grand jury, presided over by one of the judges of the realm. That course was *not* taken. The spirit in which the prosecution was conducted must preclude any notion that the course which *was* taken was from any regard to the interests of justice or the feelings of the accused gentleman; and as it would afford an opportunity for powerful and impassioned addresses before the magistrates, calculated to prejudice him in popular opinion, to inflame popular feeling against him, and prevent his chance of a fair trial—and the whole of the proceedings of the prosecution, from first to last, were obviously calculated to produce such effects—it is not too much to infer—it is in accordance with common-sense and with legal principle to infer—that this was the object. The more so, since no one, not even the counsel for the prosecution, could seriously have imagined for a moment that such a prosecution could be successful, and since it was openly derided in the profession, and ridiculed in the House of Lords as “preposterous.”

It would be hardly worth while to enter into the merits of so ridiculous a proceeding, with reference to the prosecution itself; but it is important, nevertheless, to draw attention to some points in it, as indicating the *animus* with which the Governor had been pursued from first to last, and the fatal misconceptions both as to fact and law which had given rise to the agitation against him. And the elaborate speech of the *counsel for the prosecution* requires particular attention, because it *formed the basis of the subsequent charge of the Lord Chief Justice.*

The first thing it is important to remark in the prosecu-

tion is, that it entirely falsified the professions of the prosecutors that their object was to "settle the law" upon the subject of martial law. For it was a prosecution for *murder*, which, as the counsel for the prosecution acknowledged, required, in some sense, felonious malice, and which, in whatever sense this was explained, meant (as he also admitted) some bad motive or improper feeling. And accordingly the case for the prosecution was, the existence of some such bad motive or feeling in the mind of Mr. Eyre, of which, indeed, the only evidence offered, when it came to be analysed, came, it is true, to nothing; but it is not less true that the attempt was made, and it was avowed that it was necessary to make it out. The consequence is obvious, that if Mr. Eyre had been convicted, the legality of martial law would have remained just where it was before, and all that would have resulted from the prosecution would have been the infliction of a personal stigma upon his character. Indeed, it would rather appear to be implied in the whole case for the prosecution, that the exercise of martial law might be lawful, even in trials by court-martial; for otherwise why have entered into evidence of bad motive or improper feeling? Why have chosen a case which required it? There were, unhappily, many cases; and if the object had been to test the legality of martial law, it would have been easy to have selected some case in which the guilt was flagrant and the execution admitted to have been just, and to have rested the prosecution entirely upon its assumed illegality. Nevertheless, after nearly a year and a half for consideration, that course was *not* taken, but exactly the *opposite* course, and the case chosen was that which, above all others, could least clearly test the legality of martial law, seeing that it was a case of *constructive*, not of *actual*, complicity, and a case on which several special and exceptional points were raised, on all of which the prosecutors relied, and any one of which would *prevent* a decision on the broad question of

the legality of martial law, even supposing it could possibly be raised in a prosecution for murder, as obviously it could *not* be. Moreover, it was a case which from peculiar circumstances was calculated to shock popular prejudices and influence popular feelings, and it had been taken advantage of for a year and a half by the prosecutors for that purpose, and an excitement utterly unprecedented had been created about it, and the most powerful popular orator in the land had gone about the country declaiming about it as a case of murder, and declaring that one of the judges had told him that it was so. Such was the case chosen for prosecution, and such the circumstances under which it was brought forward; and it must be manifest that the object could *not* have been to "*settle*" the law, nor even in a fair way to *vindicate* the law; for, if *that* had been the object, the facts would have been left to have their own effect when stated in evidence, instead of having been made for a year and a half the subject of inflammatory appeals, in speech and in print, and now, last of all, in an elaborate address by one of the ablest counsel of the day.

But, further, it will be manifest that, from whatever motive or for whatever reasons (and the only probable reason that can be suggested is that the object was vindictive), the plain fact is, that the case for the prosecution was rested on such a narrow and one-sided, perverted, and imperfect view of the facts, that it may be said substantially to have rested upon a *false* view of the facts, and thus to have betrayed the consciousness that upon the fair and true view of the whole of the points no imputation could possibly rest upon Mr. Eyre. The whole case was rested at the outset upon a statement which the readers of the previous portions of this work will at once perceive was precisely the opposite of the undoubted facts. The counsel for the prosecution stated in his opening:—

"I shall show that he personally ordered everything that was done; that he was referred to on every occasion; that he gave every order. I

rest it broadly upon this broad fact, that he did in point of fact give the orders and took the superintendence of the whole transaction ; and that he has avowed his responsibility for it ; and it is a pleasure to me to be able to say of a man of undoubted courage and gallantry, that from first to last in these transactions no one could have avowed more emphatically every act that he did ; no man could have stated more unreservedly every motive by which he was actuated than Mr. Eyre ; and whatever else we may say of him, I can never say of him that he has acted otherwise than as a brave, a very brave man.”*

But what was it of which Mr. Eyre avowed his responsibility in the case ? This : that after the military authorities had arrived at the conclusion that the man was amenable to martial law and guilty of a capital offence cognisable under it, and that his execution was necessary for the suppression of the rebellion, he allowed the execution of the sentence.

That was all he had to do in the case—to consider whether there were any grounds for interfering to *prevent* the execution of a sentence which the military authorities considered just and necessary. Concurring with them in that view, he did *not* interfere, and allowed the execution of the sentence. But as to the trial itself, he took no part ; he did not direct it. It is absolutely untrue that he gave any order about it, except that, at the suggestion of the Commander-in-chief, he had the accused arrested and taken into the district under martial law, and then left it to the military authorities to consider whether the circumstances would warrant his trial under martial law, and to prefer what charge against him they might think proper. (Ev. of Col. Nelson, Minutes of Evidence, p. 625.) The prosecutors knew this to be the fact ; for not only had it been sworn, but it was shown by the proceedings in evidence, on which it appeared that it was the military commander who considered the evidence, framed the charges, constituted the courts-martial, and reviewed and approved their finding, and then submitted it to the Commander-in-

* Report of the proceedings at Market Drayton, p. 28.

chief, who, with two members of the council, then considered it and entirely concurred in it, and moreover was of opinion that, in the *then circumstances of the colony, the case called for prompt and decided action*—(Evidence of General O'Connor)—that is, in plain English, called for the prompt execution of the man. It will hardly be credited that the prosecutors suppressed this; suppressed the facts which showed that from first to last it was the military authorities, and especially the Commander-in-chief, who formed their opinions as to the liability of the man to martial law and the necessity for his prompt execution, and that the Governor only acquiesced in *their* view of the case; and they then sought to make out that *he* was the prime mover in the matter; that *he* gave every order in it; that *he* was the real actor and author of the man's death, and that he was so from sinister or improper motives! Nay, suppressing the great fact that the *Commander-in-chief* was of opinion that the circumstances of the colony called for the prompt execution of the man, they laid hold of an expression in the letter of the military commander that no military reason existed why the execution should not be deferred over the Sunday, and then urged this as proof that the execution was not necessary *at all*, ignoring the deliberate opinion of the *Commander-in-chief* as to the circumstances of the *colony*. In the same spirit the counsel for the prosecution dwelt upon expressions in Mr. Eyre's letters about the justice and policy of the execution, without alluding to his repeated statements of his belief as to its *necessity*. (Report, p. 45.) That is, necessity not with reference to the particular *spot* at which the execution took place, but, as the Commander-in-chief said, with reference to the circumstances of the *colony*.

The truth is, it was manifest that the prosecution, like every proceeding against Mr. Eyre, rested on an entirely erroneous view of the subject. It rested upon this notion, that nothing could be done in the repression of rebellion

except in resistance of actual outrage. If men could be caught in the act, why they might be killed, but not otherwise; the result of which, of course, would be that if, as in Jamaica, the military forces were far too few to be everywhere, and the insurgents took care not to meet them, the whole colony might be covered with massacre before any effectual means could be taken to suppress the rebellion; then of course, with such an enormous disproportion of numbers, it would be too late. This notion really was at the root of all the agitation against Mr. Eyre. It has been seen that it was the basis of the opinion the publication of which set the whole country wrong. It has been seen that it pervaded the discussions in Parliament; it equally pervaded the prosecution; it formed the staple of the speech of the counsel for the prosecution; it equally formed the substance of the subsequent charge of the Lord Chief Justice, which really was founded upon it. Thus Mr. Fitzjames Stephen, in his speech, expounding his opinions, said—

“Martial law authorises a resort to extreme measures to suppress a *revolt*. Necessity, independently of martial law, authorises everything that can be done which is necessary for the preservation of the peace. But martial law does not justify the putting of a man to death who has no *immediate* connection with an *open insurrection*; no avowed, open, obvious connection.”

So, in a subsequent passage, martial law is restricted to actual battle!—a notion afterwards adopted by the Lord Chief Justice—

“The effect of it is that the *actual outbreak* is at an end, the state of things is critical; there is a possibility that further outbreaks may take place, and that it may be dangerous, and attended with disastrous consequences; but he is of opinion that the *actual fighting*, if any there was—anything that can be called actual battle or the possibility of it—was at an end.” (Report, p. 62.)

No doubt “there never was any notion in the negro mind of actual battle.” Well might the learned counsel add, “if any there was.” There never had been any; it

was not likely that there would be any. The danger in a negro rebellion was not "battle," not encounter with armed men, but surprise, slaughter, and massacre, such as had already taken place. The counsel for the prosecution thus described it:—

"No doubt there was an attack made upon a body of volunteers and the magistrates who were assembled, and a considerable number of persons slain; and no one can deny that it was a most lamentably terrible event, which caused well-founded apprehensions in every part of the island. There can be no doubt that it was calculated to create very great alarm in every firm mind" (p. 65).

And again elsewhere, speaking of the position of Mr. Eyre—

"I hope to be allowed to offer a passing word of sympathy to a gallant man in a most painful situation, and exposed to the greatest difficulties" (p. 47).

But the case for the prosecution was pervaded, and the views of the promoters of it perverted, by these two flagrant fallacies: first, that the moment the first outbreak was subdued, although all the feelings and causes which had led to it remained, though the disposition to insurrection and the circumstances which rendered it easy and would make it formidable, perhaps fatal, all continued to exist, yet that there was no further necessity for defensive or repressive measures; in a word, that the danger was at an end, though all the *elements* of danger remained. And further, that repressive measures were restricted to cases of open outrage, and even to cases of offenders caught in the *act* of outrage; in other words, that deterrent measures could not be defensive, and that measures of *punishment* could never be measures of *repression*. These two fallacies pervaded the whole case for the prosecution. Under their influence passages in Mr. Eyre's despatches were cited to show that he considered actual outbreak subdued and armed resistance suppressed, and from thence it was argued that the scope for martial law was at an end. As if its scope were mere riot or actual insurrection, and as

if it were powerless to deal with a state of things in which myriads are waiting for the opportunity to rise and slaughter a few scattered hundreds! The counsel for the prosecution, for instance, quoted and commented thus:—

“‘In the lately disturbed districts the rebellion is crushed ; in the others it is only kept under for the present, and might at any moment burst out into fury.’ Therefore, when he writes that, I may infer from it that no actual resistance—that no armed resistance to authority—had taken place ” (p. 65).

That is, because at one particular place, occupied by troops, there had been no further outbreak; therefore, though there were thousands of insurgents abroad elsewhere, amongst myriads of the same race known to be in sympathy with them and ready to rise, and the English inhabitants were everywhere scattered among them, and there were only a few hundreds of troops in the vast district amidst 40,000 negroes, a portion of 450,000 more surrounding them—therefore the need for martial law was at an end! The danger continued, and the Colonial Act expressly authorising the continuance of martial law during the existence of *danger*. But this was entirely lost sight of, and the whole case against Mr. Eyre was rested upon this narrow view, that nothing could be done even under such an Act; and under such extreme and exceptional circumstances nothing could be done for the repression of a rebellion except the resistance of actual outrage or the killing of men caught in the act. And this, although the very evidence showed that actual insurrection was only prevented by the exercise of these very measures which were denounced—for the troops were so few that it could not be their mere presence which prevented it, as they could only have very few places, and a mere handful wherever they were. It must have been, therefore, the terrors of martial law which, so to speak, supplemented this feeble force. And as these terrors prevented the renewal of the outrages, the cessation of them was made the

ground of complaint against the measures which had prevented them !

But there was a misconception of law more influential, perhaps, than any other in giving rise to misrepresentations which prejudiced the public mind against Mr. Eyre, and which, more than anything else, perverted the charge of the Lord Chief Justice, and that was the monstrous notion that a man might with impunity incite others to insurrection and massacre, unless you could give formal proof of his precise intention. So monstrous must this notion appear, so utterly does it revolt common sense, not to say anything of law, that it will hereafter appear incredible that any lawyers should have broached it, that it should have been sustained by a Minister of State, and that it should even have received judicial sanction. Yet the fact is beyond a doubt, and more than anything else illustrates the violence of the excitement which prevailed at the time. The notion had been originally conveyed to the Secretary of State in an opinion of the learned counsel for the partisan committee who had promoted the agitation against Mr. Eyre. It had been adopted by the Minister and embodied in his first despatch, and it now formed the basis of the most violent and inflammatory invectives, which were afterwards unhappily adopted by the Lord Chief Justice. Mr. Fitzjames Stephen thus quoted and then perverted the meaning of Mr. Eyre's expressions :—

“Mr. Eyre admits twice over that he had no evidence of any guilty intent on the part of Gordon in this matter. If there be one proposition connected with the criminal law of the land which every human being is supposed to know, it is that a guilty intent is necessary to crime, and that you cannot consider a man guilty of a crime unless the intent was a guilty one.” (Report, p. 867.)

“He says, ‘It is impossible to say what Mr. Gordon's real views or ultimate intentions were, but that his proceedings and the advice he gave to the people led to the outbreak there can be no question whatever.’ Consequently he makes him responsible for the circumstances which, as he considers, were connected with the outbreak, but which he did not in any way intend to connect with the outbreak. He says, ‘You have

done that which caused the outbreak, though I cannot say you had any intention of causing it." (Ibid.)

But what Mr. Eyre had said was, that he could not tell what the particular or ultimate intention of Gordon was, or whether he had intended the outbreak on this particular occasion, not that he had not intended insurrection; on the contrary, the whole tendency of *his* observations on the case was to show that Gordon had used language calculated to *incite* to insurrection, and therefore must be taken to have intended it. He was evidently thinking of the well-known doctrine that a man must be taken to have intended the natural consequences of his words or acts, a doctrine which his assailant entirely ignored.

It will hereafter be seen how implicitly the Lord Chief Justice adopted their notion, and almost borrows the very expressions of the counsel for the prosecution; and it will then be shown in a moment how utterly it is opposed to English law. For the present it may suffice to show how entirely inconsistent it is with Mr. Stephen's own published expositions of the law. In his interesting "View of the Criminal Law" he had to write on this very subject: and Mr. Stephen then wrote, speaking of cases in which the burden of proof shifts to the prisoner:—

"A certain number of rules have been laid down as to particular cases of common occurrence which in practice are very useful. . . . A broader rule of the same sort is often expressed by the phrase, 'The law presumes that a man intends the natural consequences of his actions.' This rule is sometimes insisted on as if it were a mere parry to a quibble. 'I did not mean any harm,' says the prisoner. 'In my own mind,' says the judge, 'I do not care whether you did or not; but, as against you, I have a right to say you must have meant to do what you really did.' I think, however, that in the present case the common argument is sounder than it is often supposed to be by those who use it. For what is the meaning of 'intent'? It means the end contemplated. This intent is seldom prominent for any very considerable time, and often varies from moment to moment, especially in people who are either weak or wicked. A man meditating a crime may be, and probably often is, 'in twenty minds' (to use the common and very expressive phrase) about it, up to the very moment of execution. *How, then, can it be known*

which particular intent was present at the moment? Perhaps he himself was not then distinctly conscious of it, and probably his subsequent recollection of it would be treacherous. *The way in which, in fact, he did act is the only trustworthy evidence on the subject, and consequently is the evidence to which, and to which alone (in all common cases), the jury ought to direct their attention.*" (View of the Criminal Law, p. 305.)

Now this, it is obvious, is just what Mr. Eyre meant, and as plainly as possible expressed. "How on earth," he said in effect, "can I tell what was passing in the man's mind, or what were his ultimate aims and intentions? All I know is the words he used, and the acts he did. He plainly caused the insurrection; that is, he incited the insurgents to it. Then he *must have intended that, at all events.* And as the natural consequence of a negro insurrection in such a colony is, that if successful it must spread rapidly, and involve wholesale massacre and ultimately deprive the Crown of the colony, it would be fair to presume that such were his intentions; but at all events he *must have intended insurrection, for he incited the insurgents to it,* and that necessarily involved murder; therefore, whether or not he intended the outbreak on this particular occasion, he intended insurrection and intended murder, and therefore is guilty of those crimes, at all events, one capital by military law, the other capital by criminal law. Whether his actual intent was treasonable or not, is not, therefore, material; enough that he was clearly guilty of crimes which were capital, at all events of a crime capital by *military law*, under which he was tried." That such was the meaning of Mr. Eyre no one could for a moment doubt who read the *whole* of what he wrote, with any degree of candour and intelligence.

The same learned gentleman, who rested his case against Mr. Eyre mainly on the supposed insufficiency of the evidence, which, however, he discussed without the least reference to the *real charge* against the accused, wrote:—

"The formation of belief is a complicated matter, involving a variety

of processes which cannot be accurately distinguished from each other because they are all carried on in the same mind, at the same time. *The only way of measuring the weight of evidence is by seeing what effect it produces.* To attempt to erect a standard of it independent of the circumstances under which it is given is like trying to fix similar standards of value or of capacity. It may be asked whether a jury in forming an opinion on incomplete testimony are at liberty to fill up by inference, or rather by conjectures suggested by the evidence, the gaps left in the story. *I think they are, up to a certain ill-defined and undefinable extent.* The question is, whether they have a reasonable doubt. And in the transaction of other important affairs of life such gaps in the evidence are not unfrequently filled up by conjecture." (View of the Criminal Law, pp. 262, 263.)

Ignoring, however, this well-known doctrine, Mr. Fitzjames Stephen went on to denounce Mr. Eyre as having sanctioned the execution of Gordon, *merely* because he believed he "had caused the whole mischief" (p. 83). As if it was wrong to act on that belief! As if that was not in substance the very offence with which the man was charged! or as if it was not, according to the express words of the Mutiny Act, a capital offence by military law to incite to insurrection, no matter what the *particular* intent may be, or whether it can be made out by express proof to be treasonable! As if a man *could* incite to insurrection and cause the whole mischief without intending it! As if it was not the very object of martial law to enable the authorities to execute men who *had* incited to insurrection, and *had* caused the mischief, provided their execution appeared to be necessary to the complete suppression of the rebellion, or the removal of the danger of its renewal! Yet it is actually put as a crime in Mr. Eyre that he had, in the honest belief of its necessity, and upon the opinion of the military authorities, allowed that to be done which it is the great object of martial law to enable them to do—put down the *authors* of a rebellion in order to put down the *rebellion*. In the same unfair spirit, arising from this fatal misconception, the opinion of the Attorney-General of the colony, that there might be a doubt as to the strict legality of the course taken in the

case, but that it had been done in the last rebellion, and that *if the emergency was sufficient, it might be done*, was actually cited *against* Mr. Eyre, the former part being pressed against him, while no attention was paid to the *latter*, the plain meaning of which was that if the authorities honestly believed the course to be necessary, it would be proper and allowable. In the same spirit, little bits and scraps of Mr. Eyre's letters or despatches, phrases such as that the rebellion was "got under," or the "outbreak subdued," were wrested from the context and cited against him to show that there was *no* necessity for the measures of martial law, whereas the whole tenor of the letters showed his sincere belief that there was a formidable *danger*, which could only be dealt with by such stern deterrent measures. This view, however, though it was presented by the plain terms of the Colonial Act, which expressly authorised the exercise of martial law on the occurrence, and of course during the *continuance of danger*, was throughout ignored; and thus again Mr. Eyre was denounced and condemned without the least reference to the real grounds on which he had acted; on the contrary, adroit advantage was taken of a despatch in which Mr. Eyre, provoked by representations that Gordon was a righteous man and a martyr (he was actually compared to the martyr Stephen!) made a variety of statements as to Gordon's moral character, and it was actually represented that these were the grounds on which he had allowed the execution!

In the same spirit—inspired, no doubt, by the fundamental fallacy arising from a forgetfulness of the peculiar circumstances of the colony, and the peculiar character of a negro insurrection—passages in Mr. Eyre's despatches, in which he spoke of the punishment due to seditious incitements among *negroes* in *Jamaica*, were used as if they were all applicable to sedition in *England*, where sedition would *only* mean sedition, whereas among a negro population, as *Jamaica*, on account of the animosities of race, and their

enormous preponderance in numbers, it meant the *most imminent danger of massacre*, and therefore it might fairly enough be presumed that this was intended, while in this country such an inference would be monstrous and ridiculous.

"In his letter to General O'Connor he says, 'It is only by making it plain to the entire population that the guilty agitator and user of seditious language will meet the same punishment as the uneducated tools whom he misleads, that we can hope to put down the spirit of disloyalty and disaffection.' What is this but to say, 'I will permit no agitation, and if it leads to disastrous results, I will make answerable with their lives those who have been guilty of it, *whatever their intent may have been*?' " (p. 86).

This latter was a most unfair and uncandid perversion of Mr. Eyre's plain meaning, which obviously was that he *presumed the intent from the act*. And he was speaking of agitation and sedition among negroes in *Jamaica*, where it meant *insurrection and massacre*, and where it *had just been shown that it meant this*, and where no one could doubt that it must mean it. Again, commenting on another passage from Mr. Eyre's despatches, in which he showed that the effect produced by the steps taken with respect to Gordon were considerable, the learned counsel said :—

"What can be clearer proof of the fact that he authorised the execution because he wanted to intimidate all those political opponents, and all those newspaper writers and others, who might stir up the people, *and whose language might in the result lead to outbreaks*?" (p. 91).

That is, might lead to such outbreaks as had just occurred ; in other words, to *massacre*. And must have been *intended*, because calculated to lead to such "outbreaks," *having already led to one*. All this is ignored.

No doubt it was Mr. Eyre's object to intimidate men who wanted to lead to such "outbreaks"—in plain English, to wholesale massacre. For that is what such "outbreaks" mean in a negro colony such as Jamaica. All history showed it, and it had just been *terribly* proved. Yet "outbreaks" are spoken of as if they were what sedi-

tious outbreaks would be in this country, merely political. This was the fundamental fallacy which had all through pervaded the view taken of the circumstances by the Commissioners, by the Government, by the prosecutors, by the learned counsel—the notion that agitation and sedition in Jamaica were merely the same things as in England!—merely political. Quoting again from Mr. Eyre, the learned counsel said :—

“He says so in so many words. ‘That the evil-disposed generally were intimidated and restrained by the punishment of Mr. Gordon there can be no doubt, and I regard it as the one crowning act which enabled the Government to cope successfully with the spirit of disaffection and sedition which was so general and wide-spread through the land.’ That is a *distinct admission that there was an act of political persecution*” (p. 91).

So it would be if the matter had happened in England. But why? Because in this country sedition does not mean insurrection, and even rebellion does not mean massacre. In a negro colony especially, peculiarly in Jamaica—it does. This had just been shown and seen. Mr. Eyre, to use Mr. Cardwell’s eloquent language, was surrounded by the weeping relatives of the victims. “Political persecution!” The mere use of such a phrase in such a case betrays a blindness as to the real character of the case wholly incompatible with the power to do the least justice to the unfortunate gentleman accused. And accordingly the prosecution was conducted in a spirit of such unprecedented unfairness that, instead of eagerly admitting, as the prosecutors would have done, had their object been to settle or even fairly to vindicate the law—instead of admitting all the facts on which Mr. Eyre rested his belief of the necessity of the step—that the actual leaders were at large urging the negroes to revolt; that on the day of the trial the insurgents met the troops in the field; that the day after the execution a vessel was seized with Haytians on board, and with arms and ammunition—instead

of admitting all these matters, they did their utmost to *exclude* them !

And this, although the facts were undoubted, and had been already ascertained and stated in an authentic public document, the Report of the Royal Commissioners ! Such was the conduct of a prosecution professedly instituted in the name of law and justice ! The prosecutors could hardly have realised the extent to which it recoiled in favour of Mr. Eyre, affording as it did the strongest and plainest proof that they were *conscious that there was no case against him upon the real facts*, and that their only chance lay in *suppressing* the most important and most material facts of the case ! This indeed had been the course taken by his assailants throughout, and they were consistent to the last. It was the course pursued in the original agitation. It was the course persisted in after the inquiry by the Commissioners had fully and fairly disclosed the real facts. It was the course, as has been seen, taken in the discussions in Parliament. It was the course pursued persistently in all the prosecutions. It was very simple. It was, in a single word, *one-sided*. It lay in giving only one side of the case and keeping out of view the other. It is obvious that in this way any public man may be condemned, and the wisest and most humane of rulers made to appear infamous. But, in the long run, it infallibly and fatally recoils upon the assailants ; for when people have recovered their intelligence and sense of justice, they cannot fail to see its gross unfairness, and, what is more important, they cannot fail to see that it involves the plainest admission that upon the *real facts*, or upon the *whole* of the facts, *the accused is unassailable*. Keeping out of sight the real facts, and especially the fact that on the day of the trial the insurgents met the troops in the field, the counsel for the prosecution declaimed thus :—

“ If you have an open war—if you have a person suddenly arrested on the field of battle, it may be necessary to shoot him on the most paltry suspi-

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cion, on the suspicion upon which, on another occasion, you would not act at all, and if Gordon had been caught red-handed, if there had been troops of rebels marching in the place at the time, and using his name as a war cry, it would be perfectly clear that he must be executed then or not at all.

"I can imagine there might have been an excuse for putting him to death upon evidence like this. But was the case so? Not at all. It is not suggested that the man was a rebel, it is not suggested that he was actually concerned in the matter. It is not suggested that he was guilty of anything but the constructive guilt of having contributed remotely to these proceedings. *There never was or had been any armed resistance to the troops.* He was actually in custody," &c. (Report, p. 81.)

Now every statement here made is opposed to the known facts as reported by the Commissioners, except indeed the last, that the man was in custody, which might be said of *any* prisoner. Not suggested that he was guilty of anything but having *remotely* contributed to the rebellion? Why it was imputed and plainly proved, and in effect reported by the Commissioners, that he had *directly caused it*, that he had in terms incited the insurgents to it! This was plainly proved by strict legal evidence. It was a notorious undoubted fact. "There never was or had been any armed resistance to the troops!" Why the rebellion began by an armed attack upon a body of volunteers, and on the day of the trial the insurgents met the troops in the field! "Not suggested that the man was a rebel!" Not indeed an *open* rebel, but it was imputed and proved that he was the *worst* of rebels, one *who incites others to a rebellion the danger of which he himself shrinks from sharing!* "If you have an open war," said the learned counsel, "and have a person suddenly arrested *on the field of battle*;"—as if that made any difference! As if the author of a rebellion was to escape because he took care to keep out of actual warfare! But that there *was* an open war was notorious. That at the time of the trial, the active leaders were at large urging the negroes to continue the revolt, and *telling them that it was war*; that at the very time of the trial armed insurgents *were* actually marching to meet the troops;

that a vessel was next day seized with Haytians on board—all these were undoubted facts; they had been sworn to and reported by the Commissioners; but the prosecutors did their utmost to *keep out* these facts, and then sought to affix to the Governor the stigma of an unnecessary execution, suppressing all mention of the facts which showed the necessity!

In conclusion the learned counsel for the prosecution put the question thus:—

“It appears to me that I have raised two important points: first, a question of law, as to what martial law is, and what martial law will justify, and in particular whether it is lawful, according to the common law of England, to take a civilian, to carry him out of a district where martial law does not prevail, into a district where it does prevail, to try him there for a crime which had been committed, if at all, months before, and upon that trial there and then to execute him in the manner then described. Then as to the question of fact, there is evidence to go to a jury whether or not the conduct which Mr. Eyre pursued in this case towards Mr. Gordon was the conduct of a man who ought only to do justice, or to do what was necessary under the circumstances, or whether it was the conduct of a man who, for various reasons being in a state of deep enmity with Mr. Gordon, allowed that enmity to influence his conduct so far as to lead him to put Mr. Gordon to death in the manner described.” (Report, p. 48.)

Passing by the obvious unfairness of suggesting Mr. Eyre's enmity to Gordon,—for which there was not the shadow of a foundation beyond his belief that Gordon was a dangerous and seditious person, a sort of reason which might just as well excuse a suggestion of “enmity” to a judge in the case of any notorious offender,—and passing by the obvious unfairness of imputing to Mr. Eyre that this enmity had anything to do with Gordon's conviction, seeing that it was not he but the military commander who formed the tribunal and framed the charges,—and passing by the obvious unfairness of imputing to Mr. Eyre that because he did not see any reason to interfere with the action of the military law, that therefore *he* “put Gordon to death,”—it is manifest that the two questions of law and of fact above stated, were mixed up together by the

prosecution and purposely involved in hopeless confusion. To test the general legality of martial law they should have chosen a case free from the *exceptional* points on which they relied ; and to test its *legality* at all, they should have assumed that its exercise in the particular instance was at all events *honest* ; whereas it is obvious they sought to snatch a conviction by means of prejudice arising from exceptional circumstances and extreme imputations, and then to set it up as establishing the illegality of martial law. In stating the *question* either of law or fact, all the facts are assumed against Mr. Eyre, so as to leave no question at all. If Gordon had nothing to do with the rebellion, or if his conviction was the result of enmity, of course it was illegal. But if he had *incited* to the rebellion it would be little short of nonsense to talk of his being a "civilian," or of his having incited to the rebellion before it broke out, as of course he must have done, or because *when* it broke out he took care to keep out of the way, as of course he did. And in truth the whole case against Mr. Eyre *did* really resolve itself into downright nonsense, into something worse than fallacy, into absolute absurdity. The men who were incited into rebellion were, at least if caught in the act, to be executed ; and the man who had incited them, and whose incitements were still unretracted, still continuing their fatal influence, down to the moment when the rebellion broke out, and *afterwards*, was to be deemed safe from military law because forsooth he kept out of the way !

Of course the counsel for the defence had no difficulty in dealing with and demolishing a case resting on such misrepresentations and such suppressions, such fallacies and such sophistries. Mr. Eyre's able counsel, Mr. Hardinge Giffard—a gentleman fully the equal of Mr. Fitzjames Stephen in intellectual vigour, in scholarship, and in forensic ability—anxious for the honour and character of his client, scorned to take advantage of any legal

technicalities, and fought the case boldly upon a far broader issue than he need have done, for he need have done no more than contend that the execution was *honestly believed* to be necessary (which the opinion of the Commander-in-chief alone abundantly showed); but he was not satisfied with that, and boldly maintained that it *was* necessary. And at the outset he brushed away the master fallacy of the whole case for the prosecution—the assumed identity of Jamaica and England:—

“Here is the issue tendered, and I will accept it; I will dismiss every other consideration. Was the death of Gordon necessary or not? I suppose no one could fail to notice that the word ‘necessary’ must be elastic in its character. *That which may be necessary in one place might be cruel and wanton in another.* And it is necessary to call attention to the state of the facts leading up to and forming part of the necessity which I say has been proved. It is tolerably clear that, in dealing with that question, there are a variety of topics which one must take into account: the situation, nature, and the geographical peculiarity of the country itself; the relative preponderance of one dominant race over another; the means of resistance; the means of assistance which were within Mr. Eyre’s grasp at the time. Each and all these topics require a separate treatment, and I think I shall be able to show without any great difficulty, notwithstanding the persistent determination to prevent my putting in proof, if it could be avoided, any single fact relevant to the issue. It is enough for me to say at present that so obstinate has been the determination to exclude every fact that might be relevant to this question—which, of course, was felt to be vital to the whole matter—that my learned friend would not, even although he was asked, allow his own witness to look at the map, lest he should be able to tell me the distance from Hayti to Jamaica. That is an illustration of it.”

Mr. Giffard then went on to notice all the circumstances of the colony to which he had adverted, and which formed the elements of danger in a negro insurrection:—

“There is next the peculiar geographical nature of the island, it being a mountainous district; the difficulty of the passes, and the prevalence of the rainy season; the population of the island; the relative number of blacks and whites—13,000 whites among about 400,000 blacks, and *scattered among them all over the island; above all, the nature of the negro population, easily excitable, and when excited somewhat savage.*”

The learned counsel then adverted to the previous cir-

cumstances of the island: the obvious disaffection which had existed for months among the negro population; the disposition to rebellion which had been observed; the apprehensions of a rising in August—only prevented by sending ships of war to the coast; the seditious agitation which had been carried on under the auspices of Gordon; and, as the result, the ultimate outbreak in October, commenced by a massacre under circumstances of horrible atrocity; and then he appealed to the Bench as to the formidable character of the danger,—

“Whether or not the country was in a state which might be appropriately compared to a barrel of gunpowder, and whether a single spark might blow the whole fabric of society to pieces, and surrender the whole of the white people of the island to the dominion of an infuriated negro population” (p. 178).

And then Mr. Giffard put the question upon its true basis, as Mr. Eyre had put it before the Commissioners and to the Secretary of State, that is, the condition, not of any particular spot in the island, but of the *whole colony* :—

“Such being the condition of the island, it was a condition in which, whatever might be the circumstances of this or that particular place, village, district, or county, you cannot confine the inquiry of what was necessary, in one place, to the mere circumstances of an area bounded by its local limits, but you must take the *whole* facts in combination; you must see whether, by removing troops to one place you might not leave the rest deserted; you must see whether, taking the whole circumstances together, the whole island being under Mr. Eyre’s government, and there being a pressing necessity as to the whole island, whether the facts relating to the *whole* are not to be taken into consideration.”

Then the learned counsel went on to destroy the fallacy which pervaded all the condemnations or denunciations of Mr. Eyre, that punishment could not be a measure of *repression* :—

“The argument assumes this, that the execution of Gordon was not a measure of repression; that is the fallacy upon which my friend has been harping all through the case. He says it was a punishment for a past offence. It was not a measure of repression (p. 196.) My friend draws a

distinction between measures which are simply measures of punishment for past offences, and measures of repression. I entirely acquiesce in that so far as the general proposition is concerned. I entirely agree with him there may be, there is a wide distinction between that which is necessary at the moment, as a measure of repression, and that which is proper to administer afterwards as a punishment for crime and vindication of the law. But in the application we differ. My friend seems to think that these things are inconsistent in their nature—therein I differ with him. The same act which, under a particular state of circumstances, may be a proper punishment for crime, may also be, under circumstances, a most efficient, wholesome, and necessary measure of repression; and the fallacy is this :—A particular act is proved—that act viewed in one aspect is a repression of crime; viewed in another aspect, the same act is punishment for past guilt; *but why may it not be both?* My friend has not dealt with that at all, and has assumed that because it would have been very proper to execute Mr. Gordon, if he had been found guilty in the ordinary course of law, therefore it could not have been proper as an act for the repression of crime. But by way of testing it, suppose the whole rebellion depended upon the life of a particular man, and suppose, as a fact, that upon taking his life the rebellion would be at an end, why, is not taking that man's life a means of repression? Concede that it may be a proper thing to punish it as crime; why is it not a measure of repression? Surely a measure of repression is a measure by which you may put a stop to the rebellion. Punishment may be a measure of repression, whether it was or not depends *upon the circumstances of the case.*

“It was one expedient of treason to convince an ignorant, excited, deluded population, that they could go on with impunity in a career of crime and insurrection, and that in any event George William Gordon, by his influence and authority, position or power, could always protect them, that the black man might be induced to persevere in rebellion, and to believe that if the worst came to the worst his friend Gordon was too powerful, and influential, and important a man to be treated harshly by the authorities, and that he would always so far terrify the authorities as that it would prevent them from executing justice for the continuance of the rebellion. Assuming all this, if the effect of putting a particular man to death would be to rob the insurgents of that which alone kept them together, of that which alone induced them to persevere in the rebellion, it appears to me that the punishment would not be punishment alone, but would also be a means of repression” (p. 202).

Then Mr. Giffard went on to enter into the facts, with a view to the explanation of this view to the actual case, and, in doing so, again exposed the fallacy of taking each part of the case by itself, instead of dealing with it as a *whole* :—

"I have said that underlying the whole of this argument there must be the assumption that the taking away the life of the supposed leader, or intended leader, would operate to disperse the rebellion. Now that is a proposition which is not a simple fact to be proved by any one witness, it is a result to be derived from all the circumstances put together, and other combinations. I do not know a more familiar mode of delusion than where there is a complex proposition to be proved and various facts are put together in order to prove it, than to take away each of those subordinate facts by itself, and to say, 'This does not prove it, that does not prove it, therefore it is not proved.' . . . Let us look at the state of the whole island at the time of Gordon's execution. The evidence stated generally was this, that in fact, in the opinion of Mr. Eyre, and of everybody who surrounded him, the island was in such a state that at any moment the rebellion, temporarily crushed, might break out again if the insurgents had the belief that they would find a protector at head-quarters. At any moment the overwhelming black population, stimulated by seditious placards, by visits paid by Gordon, by promises of protection, were all ready to rise in a moment and overwhelm the white population, which they could easily have done. That which prevented them from doing so, was that they did not know their power, and it was his constant aim and end to convince them of it; and had he been successful, what would have been the chance of the 13,000 whites? What judgment was Mr. Eyre to form on the facts before him? He discussed the question in his own mind, he arrived at a determination, and acted upon it as a bold, firm, and courageous Governor. He was right. It was, in his own words, the crowning act which crushed the rebellion."

Here, in support of this view, Mr. Giffard quoted passages from Mr. Eyre's despatch, portions of which had been cited by the prosecuting counsel:—

"In the lately disturbed district the rebellion is crushed; in the *other* it is *only kept under for the present, but might at any moment burst into fury*. In reporting the *outbreak* of the rebellion, and the steps taken to put it down, it is my duty to state my opinion that Jamaica has been, and to a certain extent is, in the greatest jeopardy."

He commented indignantly upon the unfairness of picking out *bits* from these passages in order to produce a false impression:—

"I really have not patience to argue a question upon which a gentleman's life and honour are to be imperilled when it is thought right to deal with his language in this spirit; to wrest it not only from the surrounding facts, but even from the context of the same document, and then to say,

'Because you say "the rebellion is crushed," though in the same despatch you say "it is ready to break out at any moment," therefore the rebellion was at an end, and your defence is colourable!' What can be the candour or the manliness of those who put forward such an accusation upon such a ground!' (p. 205.)

And then, in commenting upon the expression proved to have been used by Gordon in addressing the blacks, and not denied by him to have been used, only not on the particular occasion, "*You must do as they did in Hayti,*" the eloquent advocate described, in forcible language, the dreadful significance of such an expression addressed to a black population in a colony a few hours' sail from Hayti:—

"What does that mean? I say that, used in that place and at such a time, it had a terrible significance. It is not necessary to refer to the history of that unhappy country. I think some may remember, even at this distance of time and place—there are descriptions which make one's blood run cold; but this is not language used at a distance from the scene, but in its immediate vicinity, and at a time when it was supposed that there was a connection between the Haytians and those who were in arms against the Queen. And what did that mean—'You must do as Hayti does,'—if it was said to the blacks, whether or not in another parish? Did they not know the history of Hayti better than even much more educated people in this country know it? *They* knew, therefore, what a reference to Hayti meant. I will not say more; it is enough to refer to what it means—

'What triumphs for the fiends of lust and wrath,
Ne'er to be told, but ne'er to be forgot!'

That was the evidence before Mr. Eyre, and he is criticised now because, having *that* before him, and having the lives and honour of all those whom his Queen sent him to protect at the moment dependent upon his promptitude, it is now said, 'You formed a rash judgment; you ought not to have done it, and we will hunt and persecute you to death!' Great God! is that justice?"

It is hardly necessary to state the result of the prosecution. After hearing the eloquent address, based, it will be observed, not on points of law, but on the broad facts, the magistrates unanimously arrived at the conclusion that there was no foundation for the charge, and dismissed it,

and discharged Mr. Eyre upon the short, sensible ground that no jury would be likely to convict upon such evidence.

Shortly afterwards, however, the case of the military commander (Colonel Nelson) and the president of the court-martial (Lieutenant Brand), who had been, as already mentioned, committed for murder in the same case, that of Gordon, came on before the Lord Chief Justice of England at the Central Criminal Court, and all England was startled by a charge to the grand jury, which was hailed with delight by the partisans of the prosecution, and which, it was truly said by those who admired it, would be "long remembered." Contrary to all precedent, instead of being confined to judicial direction on matters of law, it turned chiefly on the facts and the merits, and entered largely into past events in the history of the colony, and, therefore, though for that reason it was of no weight or value in point of law, it has the more interest in a *history*. And it had, at least, this interest, that it conveyed, in clear and forcible language, the view which had been taken of the case by a large and influential section of the public, and by many persons of influence and eminence; and, further, it was of importance in this respect, that it embodied the views, not, indeed, of the Royal Commissioners and the late Government which had censured and recalled the Governor, but of those eminent persons who had been for two years promoting proceedings against him in and out of Parliament, in public discussions, and in criminal prosecutions. The charge of the Lord Chief Justice upon the case embodied the most extreme views which had been taken of the case; they embodied Mr. Mill's ideas of martial law, Mr. Buxton's views of the facts and merits, and Mr. Fitzjames Stephen's arguments against the accused gentleman. There was the most entire and marked accordance between the views and arguments which had been conveyed with so much ability

by these gentlemen, and especially by the advocate of the prosecution; and it was apparent that these speeches had exercised a most powerful influence over the mind of the Lord Chief Justice, to such an extent, indeed, as to make him charge the grand jury in direct, in violent antagonism to the views which he, when Attorney-General, had upheld with so much ability and energy in the Ceylon case. Nothing could more strongly illustrate the immense effect produced by the protracted agitation which had taken place, by the proceedings which had been instituted against the accused, and by the publication and circulation of them throughout the country — proceedings, be it observed, based not upon the *whole* of the *real* facts, but upon a partial, imperfect, one-sided version of them, and one, therefore, easily susceptible, especially in such a case, of being so worked as to produce the most unfair prejudice against the accused. It was a case, no doubt, on one side and the other, not only *extreme*, but exceptional, nay, *peculiar*, and one in which there was no possibility of doing justice without looking carefully at both sides. Since it was admitted to be an extreme case on the one side—since, in the language of the Governor himself, the retribution had been terrible!—the only chance of doing justice was to look thoroughly at the *other* side, fully to appreciate the *danger*; and, if one side was presented far more fully and forcibly than the other, the whole of one side and the *worst* of one side, and only a small portion, and that the weakest, of the other, it is obvious that the most grievous injustice must be done. Now for two years some of the most able men in the country had been employed in pressing upon the public mind, in the most ingenious and eloquent manner, the whole of the worst of one side of the case, the side of severity; while, from the position of the accused, standing on their defence, and *awaiting* attack, in the form of criminal proceedings, and fettered by the forms of those proceedings,

and precluded from bringing forward the strength of their case, the worst and weakest part of *their* side of the case, that of danger, was presented in the most narrow and imperfect form. The consequence was natural, but lamentable. The intellectual influence exercised on the side of the prosecution being from these and other causes overwhelmingly preponderant, it carried captive the mind of the Lord Chief Justice; and so entirely and thoroughly was he subdued by it, that he not only entirely departed from, but even violently denounced, the views of the subject which he and his colleagues had put forward in the last case upon the subject—the case of Ceylon! Perhaps nothing could more strongly illustrate the force of the influence which had been exercised than this simple fact.

The Lord Chief Justice (Sir A. Cockburn) had been Attorney-General at the time the Ceylon case was debated in the House of Commons, and in that case he and his colleague, the Judge Advocate-General (Sir David Dundas), laid down the doctrines of martial law in the strongest possible way, in the weakest possible case. For, as already shown in the Introduction, that was the weakest possible case for martial law, seeing that it was a case of a mere political rising, in which the passions of the people were not enlisted, and in which they did not take, nor even attempt, a single life! and yet, *after* it had been quelled decisively by the slaughter of 200 of them, as they were met in a body, the exercise of martial law was kept up for *ten* weeks with the utmost severity, and *scores* were executed under sentence of court-martial.* Yet all this was vindicated by Sir David Dundas, the Judge Advocate-General, and by Sir Alexander Cockburn, the Attorney-General, as entirely in accordance with law, and as perfectly right and proper, and as equally in accordance

* Report of the Ceylon Committee, 1851, Evidence of Sir D. Dundas.

with humanity! And it was upon their authority vindicated by Lord Russell, then at the head of the Government, as he was also at the head of the Government which recalled and censured Mr. Eyre, and in this he was supported by Mr. Cardwell, the Secretary of State, by whom Mr. Eyre was thus censured and recalled. On that occasion Sir David Dundas, the Judge Advocate-General, stated distinctly before a committee of the House of Commons :—

“The effect of the proclamation of martial law is to put all the inhabitants generally under martial law, and that is quite different from ordinary military law, which is written law, found in the Mutiny Act and Articles of War. But martial law, properly so called, is not written law, it is unwritten law, it arises on a necessity *to be judged of by the executive*. It overrides all other law, it is entirely arbitrary, it is far more extensive than ordinary military law. There is no practice laid down for martial law, it must be executed by those who have to execute it firmly and faithfully, with as much humanity as the occasion allows of according to their sense and conscience.” (Report of the Ceylon Committee, Evidence of Sir D. Dundas.)

And the Judge Advocate-General of the colony, being also examined as a witness, said :—

“The Governor may declare martial law upon a necessity of which he is to judge. When martial law is proclaimed the will of the ruler is law.” (Ibid.)

And upon these authorities, supported by a host of others, the author had published a work on the Jamaica case, in which, *citing the above*, he wrote :—

“Martial law is, in short, the suspension of all law but the will of the military commanders entrusted with its execution, to be exercised according to their judgment, the exigencies of the moment, and the usages of the service, with no fixed and settled rules or laws, no definite practice, and not bound even by the rules of ordinary military law.” (Treatise on Martial Law as illustrated in the Jamaica Case, p. 107.)

And certainly it never occurred to him that these views, even if *departed* from, would be denounced or reprobated by the Lord Chief Justice, who, as Attorney-General,

was actually the colleague of the very learned and estimable law officer by whom they were laid down, and had himself in the strongest way upheld the most severe and protracted exercise of martial law in a case not only infinitely weaker than that of Jamaica, but one in which there was never any real danger at all. Not a *single life* having been taken by the insurgents—who were mere political rebels—some scores were executed* by sentence of court-martial, weeks, nay, months, after the rising had been decisively put down by the slaughter of hundreds, and the then Attorney-General, the present Lord Chief Justice, vindicated it with energy, in such terms as these :—

“It is said that these punishments showed excessive rigour, and I admit it, if we look only at the particular rebellion itself; but in considering the question of punishment the Governor had to look at all the surrounding circumstances of the case. We do not punish men merely for the offences they have committed, they are punished in order to deter others from following their example. It is all very well to talk of a bloodless rebellion, suppressed without difficulty. But let us recollect the spirit of the people, their disaffection to the Government, and all the circumstances connected with the native population of the colony.” (Speech of Sir A. Cockburn, Attorney-General, Hansard’s Debates, vol. 115, p. 227.)

Nothing could be more sensible, more rational, or more just, and one might naturally have expected that these sentiments and views would have been adhered to, especially as nothing had occurred in the meantime to alter or affect their validity.

It is quite true, and it would be uncandid not to mention, that there was afterwards an unpublished despatch of the Secretary of State for the Colonies upon the Ceylon case, in which, upon the authority of Lord Campbell and Lord Cottenham, he expressed a doubt as

* The author would be sorry to exaggerate, and can only refer to the debate as abstracted in the Introduction. The official accounts admitted that nearly a score were thus executed; and it was stated, and not denied, that scores were so.

to the technical legality of the *continuance* of sentences of imprisonment or penal servitude after martial law had expired, and in which the views laid down were calculated to leave the subject in some confusion and obscurity. And it is quite possible that the Lord Chief Justice, having been Attorney-General at the time, may have seen or heard of this despatch. But, in the first place, it turned entirely upon strict technical *legality*, and involved no idea of any *culpability*, even for the *capital* sentences inflicted, as to which, on the contrary, the Governor was entirely upheld, and a Bill of Indemnity was passed, with the assent of the Crown, to protect him from all liability. And, in the next place, if the Lord Chief Justice had seen or heard of this confidential despatch, *no one else had*, and the Governor of Jamaica could only judge from the published declarations and opinions of the Judge Advocate-General and Attorney-General of the day, upheld as they had been by the Government, of which Lord Russell was at the head. Therefore, even supposing that there had been anything to alter or affect the views of the Lord Chief Justice as to the *legality* of such an exercise of martial law as had taken place in Ceylon, there was certainly nothing to attach any *culpability* to it, even had the case of Jamaica been *no more* formidable than that of Ceylon, instead of being, as will be seen, *infinitely* more formidable, and involving, indeed, a peril without a parallel upon earth. Nay, if there was no *culpability* in the Ceylon case, which was the weakest possible case, how could there be, even in *as weak* a case, *after the publication of such opinions as those of the Judge Advocate-General and the Attorney-General*, affirmed as they were by the vote of the House of Commons? And who would have imagined that in a case like that of Jamaica, not only infinitely more formidable, but the case of *peril without a possible parallel upon earth*, the exercise of martial law for a few weeks

would have been not merely declared illegal, which, indeed, it was *not*, but denounced and held up to public indignation in the most passionate manner by that very man who, as Attorney-General, had declared such measures, in an infinitely weaker case, not only lawful, but justifiable! Yet so it was.

It is true that the case of Ceylon was that of a Crown colony, and that of Jamaica, it was said, that of a "settled" colony, in which it was insisted the common law had been "carried" by the English settlers as their birthright, and probably this was so; but, in the first place, as the very phrase imported, it was carried with them as their birthright, for their own benefit and that of their descendants; and, although by an egregious blunder it was supposed to apply to the *Africans*, it is manifest that *they* would be in the same position as the Cingalese, or the Malays, or the Hindoos, and could not claim the privileges of a law pertaining to Englishmen. But, in the next place, the distinction was purely legal, and went to mere *legality*, and therefore could not affect the question of *culpability*, which must depend on far broader considerations of necessity, justice, and humanity. No one nowadays would venture to maintain that Africans or Cingalese are to be treated, whatever may be their strict legal rights, with less humanity or justice than Englishmen or Irishmen; while, on the other hand, no one in his senses would say that they are to be treated with *more*, and that if even Englishmen are liable to the pains and penalties of war, if they engage in rebellion, that Africans or Cingalese are not. With reference, therefore, to those broader considerations upon which these questions must be determined, the distinction was idle, technical, and visionary. Whether in Ceylon or Jamaica, the real question would be necessity, and that would depend upon the degree of the *danger*.

Now, what was the Jamaica case? Let it be stated, first, in the words of the Lord Chief Justice himself.

"It appears that in the year 1865 a spirit of discontent and disaffection and of hostility to the authorities had manifested itself among the negro population in parts of the island of Jamaica. On the 7th October, some disturbance took place on the occasion of a magisterial meeting at Morant Bay, and it seems to have brought this insurrectionary spirit to a crisis. Immediately after it the negroes in the neighbourhood were evidently in an excited state, and were making preparations for an outbreak, so much so that on the 10th it was thought necessary to apply to the Governor for military assistance. On the 10th warrants having been issued against one or two of the persons who had taken part in the disturbance, upon those warrants being attempted to be put in execution, forcible resistance was offered, and the insurgents, to the number of several hundreds, made their appearance in arms."

It is to be observed here that though the Lord Chief Justice states that there was a spirit of disaffection and of hostility to the *authorities*, the Lord Chief Justice does not say a word as to any *planned* rebellion for the extirpation of the whites. He proceeds:—

"The insurgents, to the number of several hundreds, made their appearance more or less in arms. They attacked the Court-house where a meeting was being held. The volunteers came to the assistance of the magistrates, but they were overpowered—the Court-house was stormed. No less than eighteen persons were killed and upwards of thirty wounded; and from that moment the negro population in the neighbourhood was in a state of rebellious insurrection. This spread itself rapidly. The insurgents attacked the neighbouring estates, destroying property, in two instances taking life, in others inflicting severe wounds; in others seeking victims, who, however, managed to escape; and declared their *intention to destroy the male part of the white population, and take possession of all the property in the island. This state of things, as one would naturally have expected, excited in the minds of the white population the greatest consternation and alarm. The military force in the island was but small; the number of the white population small, very small, in proportion to that of the blacks, and the result was, of course, that terror and alarm pervaded the whole island.*" (Charge, p. 5.)

And again elsewhere:—

"I feel bound to say, that, looking to the general consternation and alarm which pervaded the island,—looking to the circumstances in which the white population and the authorities of the country were placed with reference to the insurrection, the *small* proportion which the white population bore to the black, to the mere handful of military force that ther

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was, and to the consequences, too horrible to think of, which might have ensued, if this insurrection had not been suppressed,—to the threat of the insurgents of destroying the white men, and their reported intentions as to the white women,—I think, if ever there were circumstances which, if it be lawful to put martial law in force, called for the application of it, it was this case of the insurrection in Jamaica.” (Ibid., p. 157.)

Such was the description given of the insurrection by the Lord Chief Justice himself, or rather, of the *outbreak* of it; for although at first sight it might appear to be an adequate description of it (and no doubt was *intended* to be so,) it *omits the most material, the most important, element in the case*, the disregard of which necessarily perverted his whole view of the subject—viz., that it was a *planned* insurrection with *general* objects, and those objects calculated most powerfully to excite the passions of the enormous black population—the *obtaining of land*, and the *extirpation of the whites*. It is most extraordinary that the Lord Chief Justice should have omitted to notice these two—the most important—features of the case, in which lay the formidable nature of the danger to be grappled with, for they had both been distinctly stated by the Commissioners in their Report; and not only so, but, more recently, by the Recorder, the chief legal Commissioner, in the course of the debate upon the subject. The Commissioners had reported:—

“That the disturbances had their origin in a *planned* resistance to lawful authority; that the principal object of the disturbers of order was the *obtaining of land* free from rent, while *not a few contemplated the attainment of their ends by the death or expulsion of the white inhabitants of the island*; that though the original design was confined to a small portion of the parish, yet that the disorder *spread with singular rapidity over an extreme tract of country*; and that such was the state of excitement prevailing in other parts of the island, that had more than a momentary success been obtained by the insurgents, their ultimate overthrow would have been attended with a still more fearful loss of life and property.”

Such was the account of the insurrection given by the Commissioners, and it will be seen that it amounted to a

dangerous and formidable *rebellion*, the sympathy of race and community of feeling making it far *more* formidable, and involving a far *greater* danger, than any mere general conspiracy *without* the tremendous force derived from that sympathy; the result of which was, that it spread with singular rapidity all over a vast tract of country—a parish in Jamaica meaning a county in this country, and the parish in question containing 600 square miles, and a black population of 40,000. Added to this, it was in evidence, as already seen, in the case before the Lord Chief Justice, that the black population was 450,000, that the whites were 13,000, and that the handful of troops at the disposal of the military commander was only 450, a *hundredth* part of the number of that portion of the black population who were *already* in rebellion, and among whom it was “spreading with singular rapidity.” The Lord Chief Justice, however, unfortunately failed to notice the most important features of the case—that it was a *planned* insurrection, and an insurrection with *general* objects, and one of them a *murderous* object, the extirpation of the whites; in short, it was a dangerous and murderous *rebellion*; and ignoring these elements of danger, he took a view of the case quite unlike that of the Commissioners, and treated the case throughout as one of mere riot or casual revolt, confounding the *outbreak* of the rebellion with the *rebellion*, and speaking of the rebellion as at an end, and all danger over, the moment the first outbreak was put down! This, it will have been seen, was all along the view which the promoters of the prosecution and the assailants of the Governor had contended for, and it was the view put forth by Mr. Buxton in the debate.

As already mentioned, the Lord Chief Justice, under the influence of the fatal misconception which misled him, took Mr. Buxton's view of the facts, and hence it was utterly unlike the *true* state of the case as represented in the Report of the Commissioners. Hence he thus described

what he deemed the *suppression* of the *rebellion*, i.e., of the *outbreak* of it :—

“A small military force of 100 men, which had been despatched in consequence of the application made to the Governor on the 10th, was very soon upon the scene of action, and was followed by other troops ; and the force so sent, although in point of number comparatively small, was able at once to suppress and crush *this outbreak*. The moment the soldiers appeared on the field the *whole insurrection collapsed*. The negroes everywhere fled ; and the only business of the military appears to have been to pursue and take them ; and when martial law had been proclaimed, to bring them before the military tribunals.” (Charge, p. 6.)

Except as applied to the *original outbreak*, all this was utterly opposed, not only to the case as stated by the Commissioners, but to the evidence before the Lord Chief Justice ; for the statement of Colonel Nelson, which was in evidence, showed that the whole district was for ten days the scene of military operations to *keep down* the insurgents ; and the Commissioners highly approved of these operations, and stated that, so far from the “*whole insurrection having collapsed*,” the insurgents, *ten days after the outbreak*, attacked the troops in the field ! Such was the contrast between the view taken by the Lord Chief Justice of the nature of the case and that taken by the Commissioners. In his view (as he stated in a note), the “*insurrection was over in a day !*” The reason was, that he looked *only* to the *outbreak*, and forgot the *rebellion* of which it was the outbreak. In other words, he was thinking of a riot or casual revolt, whereas the Governor had to deal with a dangerous and formidable rebellion. Hence all through he talked of the rebels as civilians and so forth, and showed as little notion of the magnitude of the danger as Mr. Buxton himself. The contrast between that view and that of the Commissioners will be best appreciated by means of some extracts from the speech of the Recorder in the debate, *in answer* to Mr. Buxton, which applies equally to the Lord Chief Justice :—

"The hon. member ignores the fact that there was any planned rising or insurrection; has he forgotten that which was proved by witness after witness, that for weeks before the outbreak there had been actual drillings among the people, that they formed into companies, and that captains and colonels had been appointed over them, and that they had been told that the time would come when the effect of their drillings was to be seen, and that they were to obtain the advantages that were sought to be obtained by those who were the originators of the outbreak? We find this was the watch-word, the war cry, throughout the few days the insurrection lasted, '*Colour for colour!*' 'Buckra no more!' 'buckra' being the negro term for the whites. In former times a different course was pursued. The plantations and trash-houses were set fire to and burned down. On the present occasion they were untouched, the cry being 'No touch trash-houses; we want them for us;' the plan also being distinctly announced that, on the following week they, after they had possessed themselves of the whole of the country, they were to take up the crops as the white population would be driven away. It is not quite right to have these facts ignored, and when dwelling on the severities practised, and which I deplore, and which I think were condemned in tolerably strong language in our Report, it is not right to ignore the real state of the island or the perils to be encountered by the persons in authority at the time they were guilty of those excesses."

And, unhappily, the Lord Chief Justice as entirely ignored and denied this fact and the *planned rebellion* among the blacks which caused it, as Mr. Buxton had done, and considered the danger at an end the moment the *outbreak* was put down! Very different was the view taken by the Commissioners, who had declared their opinion that the *Governor would have been to blame* if he had terminated martial law earlier than it was terminated, and that its actual exercise was justified up to the end of the month, when the reinforcements arrived; and it was only, it is manifest, because they had not before them the correspondence between the Governor and the Commander-in-chief, which showed that the reinforcements, though they had *arrived*, were not *distributed* until the termination of martial law, that they thought that the actual exercise of martial law could safely have been stopped when the reinforcements *arrived*. The language of the Lord Chief Justice implied, on the contrary, that there was no necessity for martial law at all, or, at all events, after the first

day or two, for he says that at once the whole insurrection collapsed, and that the insurrection was over "in a day." So dangerous is it for a judge to *deviate* from the evidence, or even to *enter* into the evidence, in charging the grand jury on an *ex parte* case! Even, however, upon the version of the case given by the Lord Chief Justice himself, there is a most marked inconsistency between the view he thus took and the view he had taken as Attorney-General in the Ceylon case. There the rising was merely political, and not a life was taken in it; and he upheld the exercise of martial law with relentless severity for ten weeks after the rising was put down. *Here* there was, on his own showing, a dangerous and *murderous* rebellion, and he denounces the authorities for exercising martial law for *four* weeks, and implies that it was not required at all after the first day or two. The best answer to the Lord Chief Justice is in the words of the Lord Chief Justice himself when Attorney-General in the Ceylon case:—

"In considering the question of punishment, it was necessary that the Governor should look at all the surrounding circumstances of the case. We do not punish men merely for the offences they have committed. They are punished in order to deter others from following their example. It's all very well to talk of a bloodless rebellion suppressed without difficulty. But, let us recollect the *spirit of the people*, *their disaffection to the Government*, and all the circumstances connected with the native population of the colony."

That was what Mr. Eyre had to consider in the case of Jamaica—a case not of a bloodless "rebellion," but of a most dangerous, formidable rebellion, *begun* with a massacre, carried on by murder, and having for its object the extermination of the whole white population—Mr. Eyre had to consider the spirit of the people, as to which the Lord Chief Justice himself has stated that—

"A *spirit of discontent and disaffection and of hostility to the authorities* had manifested itself among the negro population in parts of the island."

Mr. Eyre had to consider "all the circumstances connected with the negro population of the colony," circumstances thus stated by the Lord Chief Justice himself:—

"The old animosity arising from the relation of master and slave, although that relation had ceased, had probably left, even in the minds of the posterity of those who had suffered under the old system, a *feeling of enmity towards the white men*, and a jealousy of their superiority." (Charge, p. 149).

And again—

"The military force in the island was but small; the number of the white population small, *very small*, in proportion to that of the blacks" (p. 57).

The facts were fairly enough *stated* by the Lord Chief Justice, and certainly not at all in exaggeration of the *evidence*, for the evidence before him was that the blacks were 450,000, the whites 13,000, and the troops at the disposal of the Commander 450! The whole number in the colony was only 1,000, of which a portion were non-effective, and a portion required for the defence of the two chief towns and the military stations; and thus there were less than 500 men at the disposal of the Commander to put down the rebellion; a rebellion of blacks; a war of extermination by the blacks against the whites, in a colony where the blacks were as 450,000, the whites as 13,000. In a word, 450 men to keep down a rebellion rapidly spreading among 450,000! That was the task of Mr. Eyre! That was the danger he had to encounter! And the Lord Chief Justice said it was all over as soon as the *outbreak* was over. "It was all over in a day!" He stated the facts, but failed to draw the proper inferences; and he went out of his province in drawing them at all: it was the proper province of the *jury* to do so. His province was to state the *law*, which he did *not* do, and left to them. Instead of that, he usurped *their* province as to

the *facts*, and having an entirely wrong notion of them, did enormous injustice.

Having, however, thus given his version of the *facts*, the Lord Chief Justice went on to give his views of the law, which, it was obvious, were utterly perverted by his view of the *facts*. Here, indeed, was his cardinal error—that, instead of first settling in his mind what the *law* was, and then viewing the facts through the medium of his views of the *law*, he had allowed his view of the *law* to be unsettled and disturbed by his view of the facts—a *wrong* view because a one-sided view—and thus found himself unable to lay down distinctly what the *law* was, while allowing himself unusual license in observations, and even denunciations calculated to prejudice the accused upon the *facts*. Having taken up the utterly erroneous view of the *facts*, which has led him to ignore the formidable character of the *danger*, he went on to view the *law* exactly as if it were the case, not of Jamaica, but of England or Ireland. He fell into the twofold fallacy ingeniously prepared by the counsel for the prosecution, that because the common law was carried to Jamaica by the English settlers as *their* birthright, therefore it precluded martial law against the *Africans*, except when allowable by the common law here, and that because in our time such an exercise of martial law could *never* be necessary in this country, therefore it could not be necessary in a negro colony like Jamaica! Accordingly, having in very loose language argued that the common law was carried to Jamaica for all the inhabitants, not noticing that it was expressly restricted to the *natural born English subjects and their descendants*, the Lord Chief Justice, mindful of Ceylon, carefully drew the distinction which he hoped would cover the inconsistency between his present views and those he had upheld in *that* case, viz., that Ceylon was a *Crown* colony, in which the common law did not prevail (as if that mattered, with reference to considerations of justice, of necessity, or humanity!), and

then went on to denounce in most unmeasured terms the identical doctrines which he, as Attorney-General, and his colleague, the Judge Advocate-General, had laid down in the case of Ceylon !

"Then arises the all-important question what this martial law is. For of *late* doctrines have been put forward to my mind of the wildest and most startling character ; doctrines which, if true, would establish the position that British subjects not ordinarily subject to military or martial law may be brought before tribunals armed with the most arbitrary and despotic power, tribunals which are to create the law which they are to administer, and to determine upon the guilt or innocence of persons brought before them with a total disregard of all those rules and principles which are of the very essence of justice, and without which there is no security for innocence " (p. 22).

No one had ever laid down such doctrines, *except, indeed, the Lord Chief Justice himself*, who in this very charge laid down the monstrous doctrine that rebel prisoners might be shot without trial !

"A rebel in arms stands in the position of a public enemy ; and, therefore, you may kill him in battle, as you might kill a foreign enemy. Being in the position of a public enemy, you may refuse him quarter ; you may deal with him in this respect, also, as with a foreign enemy. We are not dealing with the case of rebels killed on the field of battle, *or put to death afterwards without any trial at all* " (p. 25).

What had been laid down was *exactly the contrary* of what the Lord Chief Justice represented, and had been laid down in the very words of the Judge Advocate-General, the colleague of the Lord Chief Justice himself, when Attorney-General, to the effect that there were no settled rules, but that martial law must be administered according to substantial justice, conscience, and humanity. The Lord Chief Justice then quoted from the author's book, in support of his representations, and, imperfect and incorrect as the quotations are, it will be seen how utterly they fail to excuse him.

"I find such doctrines as these laid down. 'Martial law is arbitrary and un-

certain in its nature, so much so that the term law cannot be properly applied to it.' Again, 'When martial law is proclaimed, the will of the ruler is the law.' Again, 'When martial law is proclaimed, there is no rule or law by which the officers executing martial law are bound to carry on these proceedings; it is far more extensive than ordinary military law, it is entirely arbitrary.' Lastly, I find in print this startling proposition: 'Martial law is, in fact, the suspension of all law but the will of the military commanders entrusted with its execution, to be exercised according to their judgment, the exigencies of the moment, and the usages of the service, with no fixed and settled rules or laws, no definite practice, and not bound even by the rules of military law'" (p. 22).

In this last citation, which alone was the author's own, the word "ordinary," which the writer had introduced, is omitted, and *all mention is omitted of the fact that the previous passages, upon which it is founded, are quotations from the evidence of the Judge Advocate-General, the former colleague of the Lord Chief Justice himself!* Well might the Lord Chief Justice omit this, for he goes on to denounce, in the strongest terms, the doctrines *which he himself and his own coadjutor* had formerly laid down.

"The difficulty one has in dealing with the subject, is that, *with the exception of the persons making these assertions*, I find no authority for any such doctrines. They seem to me as unfounded and untenable as in my judgment they are *mischievous*, I had almost said *detestable*" (p. 23).

Who would have imagined that among "the persons making these assertions" had been the Lord Chief Justice himself, and his coadjutor, the Judge Advocate-General? Nay, who would imagine that in this very charge he lays down doctrines infinitely worse than those which he denounces, viz., that rebels may be executed without trial at all? Such flagrant inconsistency, not merely with his former opinions, but with his *present*, betrayed the existence of some unusual influences upon the mind of the Lord Chief Justice; and traces are easily to be found of the influence of the agitation, which had been kept up for two years. For, as he had imbibed Mr. Buxton's view of the facts, instead of the calm judicial findings of the Com-

missioners, so he had imbibed Mr. Mill's view of the law, that martial law only applied to rebels taken in the field after battle—an inconsistency wholly unworthy of that great thinker; for it involved the whole *principle* of martial law in any case of proved complicity in the rebellion; and his charge embodied with remarkable fidelity the arguments—ingenious but erroneous—by which Mr. Fitzjames Stephen had enforced that view. All the clever fallacies which had been constructed by that acute and dexterous advocate, and had been torn to pieces by the able arguments of Mr. Hannen and Mr. Giffard, were carefully reconstructed and reproduced by the Lord Chief Justice. The basis of his whole argument—and it *was* but an argument—being the fundamental fallacy, that nothing more could be necessary in Jamaica than in England; and that there was not only legal, but actual and social identity between this country and the colony; so that the danger there could not be greater than the danger here, *nor* could deterrent measures be required there in such a case any more than here. All this arose, it is obvious, through the erroneous view of the *facts* which had been taken by the Lord Chief Justice. Having taken Mr. Buxton's view of the facts, he naturally enough took Mr. Mill's view of the *law*. Ignoring all the elements of danger, of course he did not realise the danger. Not realising the *danger*, of course he did not realise the *necessity* for the deterrent measures which had been adopted, and which, no doubt, had been extreme. The Governor himself had described the retribution as “terrible.” This could only be justified by a *terrible danger*. The Lord Chief Justice, failing to realise the *danger*, of course deemed the retribution—which was admitted to have been “terrible”—excessive and unjustifiable.

It was, indeed, under peculiar circumstances the Lord Chief Justice came to charge the grand jury in the case of the military commander; and it would be unfair not

to acknowledge that it was, in some respects, under circumstances of extraordinary difficulty and embarrassment. For, incidentally, the colonial Act merely authorising "martial law," and not defining it, he had to consider what martial law was in this country; and to do so in an extreme and exceptional case, in which a civilian who had not borne arms in the rebellion, nor was even in the district, the scene of it, had been suddenly seized, and tried and executed, by a military tribunal, for what at first sight, at all events in this country, would seem merely seditious language. And however clear it might be that, as a matter of abstract law, martial law was allowed by the law of England, in time of rebellion; yet, on the other hand, its exercise in this country was so remote as to be matter of history; and it had never been the subject of direct judicial decision. And although there were legal decisions or doctrines from which it could be established by way of logical deduction, yet it was an arduous and repulsive thing to have to lay down in this nineteenth century, and in the presence of such an excitement, and such a powerful and popular combination, that by the law of England men could be so summarily dealt with. It is true, indeed, that, on the one hand, as for ages there had been no necessity for such an exercise of martial law in England, and it was not likely that there ever would be, it was a matter almost of antiquarian nature, except only so far as it bore on the construction of a colonial Act; and that, on the other hand, although the common law of England may be carried to a settled colony by English settlers, it is only for themselves and their descendants, except so far as it may have been actually used and adopted, and so far as it may be consistent with the local statutes. But amidst the agitation which had been excited on one side, by appeals to popular jealousies, to political liberty, and, on the other side, by appeals to the sympathies of the abolitionists and the susceptibilities of the

political liberals, these matters were overlooked or disregarded. And the feelings of those powerful parties would have been equally shocked by a decision that such an exercise of martial law was justifiable according to the law of England, or that the negro was liable to a law *different* from that of England. The question, therefore, in the excited and sensitive state of the popular mind, appeared virtually an *English* question, though *arising* in Jamaica, and English prejudices and English feelings had been powerfully aroused. Nor was it possible for a judge entirely to overlook these circumstances, because, after all, lay down the law as he might, its *application* must ultimately be for a *jury*.

Moreover, the difficulties of the Lord Chief Justice were increased by the traditions of his *order* and his *office*. The judges of England are the guardians of the laws and liberties of England, and have an equal jealousy of popular anarchy and military authority. They are equally zealous for *peace* and for *liberty*. They are, therefore, disposed to allow a large latitude to attacks by the military on tumultuous assemblies (although in reality these attacks are but military executions on a large scale—without inquiry, and without discrimination), but they are extremely hostile to anything like the substitution of military for civil authority, or the summary trial of civilians by military tribunals. Their professional habits and official traditions make them regard the institution of judge and jury almost with superstitious awe; and they hardly realise the notion of law and justice without it. Courts-martial hardly ever come under their notice. They do not quite realise that hundreds of thousands of our fellow Englishmen—just as much free citizens as any others—are, in fact, placed under such authority, and that their lives and liberties are subject to such tribunals. And, living in ordinary times, in a country, the tranquillity of which is rarely disturbed, even by a local riot, they

cannot without difficulty realise the condition of a country where the loyal and the peaceable are in a small minority, and they are exposed to the attacks of hostile myriads of a different race. And the Lord Chief Justice himself observed, alluding to some of his predecessors, that, wedded and devoted to the common law—the study of their lives—they would be very apt to look with contempt on a law administered by military tribunals, and refuse to acknowledge it as law at all. (Charge, p. 105.) Such were the feelings and ideas which the Lord Chief Justice would inherit from his order, and which would inspire him with a strong aversion to the exercise of martial law upon civilians.

It is quite true that, in point of legal principle, nothing could be more clear than that rebellion is war, and that those who take part in it are liable to be treated as soldiers; at all events, if they have carried arms, or have actively aided it. But then men are slow to draw logical deductions, which lead to conclusions to which they are averse; and the judicial mind is proverbially distrustful of logical conclusions which have never been drawn or sanctioned by judicial decision. And in this age to establish an unpopular prerogative power by logical conclusions would appear, no doubt, an arduous and perilous attempt, especially in the face of so much popular excitement. Added to which, the case was *not* one of actual or entire participation in the rebellion, but of *constructive* responsibility for it; resting on what seemed to English minds, and would, perhaps, among English people, resemble mere sedition, an offence which the English mind cannot understand to be deserving of capital punishment, which, indeed, is never so except under extreme and exceptional circumstances. And although lawyers were well aware that on account of the danger of seditious incitements addressed to armed men, *it is* a capital offence, even by statutable enactment in time of peace, and by prerogative in time of war, it

occurs so rarely, if ever, in this country, that here again the enunciation and application of such a doctrine to a civilian, as a ground of constructive liability to the pains and penalties of military law, would have the aspect of something to the popular mind novel and detestable. It would appear like a revival of old prerogative power in modern times. It is true that on the last occasion on which the question had arisen, the Lord Chief Justice, as Attorney-General, had upheld the exercise of martial law; and if he had altered his view, this did not involve any culpability on the Jamaica authorities. But the Lord Chief Justice, rightly or wrongly, had, under the influence of the agitation, embraced the notion of a perfect identity between *Jamaica* and *England*, whereas Ceylon was a Crown colony, in which the inhabitants had not the benefit of the common law; and thus it seemed to him as if he were called upon to determine the validity of martial law in this country. The fallacy lay in forgetting that in this country it was now mere matter of *history*, but in Jamaica, matter of terrible necessity.

The only way of doing justice to the authorities in the Jamaica case would be to realise the great, the tremendous *difference* between the circumstances of that colony and of the mother country, or even of any other colony, a difference arising from the enormous preponderance of the black population, and their natural feelings of animosity against the whites. But though this was *admitted* by the Lord Chief Justice himself, he failed to *realise* it, partly, no doubt, from his having failed to notice that the insurrection was *planned*, and with a view to the *extermination of the whites*. But there were other causes, plainly discernible in the charge, for the utter failure of the Lord Chief Justice to realise the danger. There lay at the basis of his whole view of the subject a prejudice, evidently derived from abolitionist literature, against the white population in our negro colonies, and especially in Jamaica; and a

persuasion that in all cases of negro insurrection they were to blame, and not the negroes. As already mentioned, the powerful party known as abolitionists, not because they were the only friends of abolition, but because they were those who, in its name, and on its account, too often forgot what is due to truth and justice, had exerted themselves to the utmost on this occasion to diffuse their notions, which came very much to this :—that negroes could never be in the wrong; that the white inhabitants are oppressors; and that, therefore, the insurrections of negroes are rather to be deemed righteous retributions than to be deserving of retribution; and that, consequently, the exercise of martial law for their repression must be necessarily iniquitous. Monstrous as these notions may appear, they are undoubtedly embodied in the publications, and are constantly to be observed in the conversations of this powerful party; and, undoubtedly, traces of their influence are to be observed in the ideas of the Lord Chief Justice on the subject. In the course of his charge he entered largely into matters of history extremely remote from the matter in hand; and the very introduction of which itself showed the presence of prejudices in his mind, and the operation of influences upon it extremely unfavourable to a just and dispassionate view of the subject. And in the early part of it he took occasion to speak thus of negro insurrections :—

“ I suppose there is no island or place in the world in which there has been so much of insurrection and disorder as the island of Jamaica. There is no place in which the course which attaches to slavery, both as regards the master and the slave, has been more strikingly illustrated. Mr. Montgomery Martin, in his *History of the Colonies*, tells us, with reference to Jamaica, that between the settlement of the colony and the year 1832, a period of about 154 years, there were no less than twenty-eight insurrections of the negroes in the island, being at the average rate of about one in every five years and a half, and these outbreaks appear to have been put down with a degree of violence and barbarity which is perfectly appalling” (p. 79).

How entirely *irrelevant* all this was need not be pointed out. It would have been very relevant to point out those circumstances upon which the Royal Commissioners and the Secretary of State had remarked, the enormous disparity between the black and white populations in Jamaica, which make such a terrible peculiarity in its case, and render a negro insurrection there, *in our own days, a peril without a possible parallel on earth*. It would have been extremely relevant to point out—especially as it was in the evidence before the Lord Chief Justice—the relative numbers of the black and white populations *in our own days*, viz., 450,000 blacks to 13,000 whites; for this tremendous disproportion of numbers would have shown the formidable character of the *danger*, and so would have had a deep and important practical bearing upon the case before the Lord Chief Justice. But to refer in this inflammatory way to the supposed atrocities in putting down negro insurrections, in the last century, or the last generation, could only tend to inflame and prejudice the minds of the jury against those who had been engaged in the suppression of the recent rebellion. For the natural effect of setting forth, skilfully and artistically, the supposed atrocities committed in the suppression of negro insurrections in former days, *without a word being said as to the atrocities perpetrated by the negroes*, was to produce an impression that this was likely to have been the case in the recent instance. And it marks most significantly the one-sided and prejudiced opinion in which the Lord Chief Justice approached the case, that he should have *omitted* observations which would have been most relevant and important, and have *made* such as would have been utterly one-sided and unfair, even had they been correct in point of fact. But, in point of fact, they were entirely unfounded. They were utterly unfounded, whether as to the nature or the number of the insurrections thus described. The basis of the whole statement, it will be

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observed, is that there were so many insurrections, the result of slavery—so many *slave* insurrections. The statement is, that there had been nearly thirty in a century and a-half; and for this astounding statement the authority of Mr. Montgomery Martin is appealed to. Not a very impartial one on such a question; and that the Lord Chief Justice should have cited such an authority is sufficient to show that his own reading had been so one-sided as amply to account for any amount of prejudice. But, so far as the author is aware, the astounding statement is not to be found in the work of Mr. Montgomery Martin, nor does he believe it is to be found in any authentic work. At all events it is a statement which could only be invested with the semblance of truth by reckoning every petty disturbance upon every estate. In point of fact, as every one knows, who knows anything about West Indian history, there have been only four insurrections in Jamaica during the century and a half we have held the colony, and these mostly owing to the peculiar condition of the island, through the presence of that anomalous race the Maroons: a race, be it observed, of *free* negroes, and out of these four, only two could be fairly called slave insurrections, and only one, if one, could be fairly ascribed to slaves. The war in 1659, was a war with the Maroons. The rebellion of 1760, a whole century afterwards, was certainly a slave insurrection, and accompanied by great atrocities on the part of the slaves, which an impartial historian, Mr. Bryan Edwards, mentions, though he equally mentions and with reprobation, the retaliatory severities of the planters, while the Lord Chief Justice in the one-sided spirit that pervaded his charge, only mentions the *latter*! Then there was the Maroon insurrection of 1795, in which they invited the negroes to join them. Then there was the negro insurrection of 1832, which although a slave insurrection, could hardly be ascribed to slavery, since it was on the eve of

emancipation, and as Mr. Alison states, it was caused by premature announcements of the measure. The Lord Chief Justice goes on in the same one-sided tone :—

“There were two principal insurrections. One took place in the year 1760, in which it is said that about 1,000 negroes perished by execution and slaughter of every kind, and in which martial law was carried to an excess that was perhaps never heard of anywhere else.” (Ibid.)

And then he describes some of the severities inflicted upon the slaves, in retaliation of their atrocities, *of which the Lord Chief Justice says not a single word*, leaving every one to imagine that they merely rose in arms for freedom, and committed no cruelties, no atrocities that could excite resentment or inspire revenge. It is evident that the Lord Chief Justice had imbibed largely the spirit of Mr. Montgomery Martin, who declares in his History that the *worst* atrocities of the negroes were as nothing compared with the holding them in bondage; so, in his allusion to what even Mr. Martin calls the “terrible” insurrection of 1832, the Lord Chief Justice says :—

“Another great rebellion occurred in 1832, and though similar atrocities were not perpetrated then, yet a vast number of executions and of other punishments took place.”

The severities inflicted in putting down a negro insurrection, it will be observed, are always spoken of by the Lord Chief Justice, if not as atrocities, yet as, some how or other, to be reprobated: The executions and punishments inflicted on the last occasion of a negro rebellion are spoken of, it will be seen, in this spirit. They are not actually called “atrocities,” but they are mentioned evidently as something very like atrocities. There is not a word in all the allusions of the Lord Chief Justice to negro insurrection, in the least indicative of any horror at *the atrocities perpetrated by the negroes*, or the natural effect in exciting the passions of the white inhabitants. His mind had taken no notice of considerations which showed

the awful danger and horror involved in a negro insurrection, and it was absorbed in the idea of the severities required to suppress it. There is no attempt to realise the horrors of massacre, the mingled feelings of rage and terror it must naturally excite in the minds of the friends and relatives of the victims, the natural impulse to pursue, capture, and execute the wretched miscreants who had been the perpetrators of so horrible a slaughter. Not a word is said by way of allowance for these feelings, even in the first heat of pursuit, or in the first flush of vengeance. The atrocities of the assassins are hastily slurred over, the military executions in the pursuit are called "slaughter," and are dwelt upon in inflammatory language, as if the most cold-blooded, unprovoked, and inexcusable cruelties. It must be obvious that a judge, who, by reading one-sided, partisan, and prejudiced writers, had thus imbued his mind with one-sided and partisan views, would be utterly incapable of doing justice to those who had been engaged in the suppression of a negro rebellion. And it is remarkable that, though the attention of the Lord Chief Justice had thus been drawn to previous insurrections, he failed to observe this most important fact, that none of them had been *one-half* so dangerous as the recent one; for that while the number of the blacks had enormously increased, the number of the whites had proportionately diminished, so that the disproportion between the two races was greater than had ever been before. All this was lost upon the mind of the Lord Chief Justice, absorbed as it was in the one idea which possessed it, that severities exercised in putting down a negro rebellion must be atrocities.

Such being the preconceived notions of the Lord Chief Justice, so entirely opposed to history, as to the general nature of the contests between the blacks and the whites, he betrayed impressions equally strong with reference to the causes which led to the recent rebellion

in question, and impressions not derived from history, from the evidence, or from any authentic source. He said, indeed :—

“The old animosity arising from the relation of master and slave, although that relation had ceased, had probably left even in the minds of the posterity of those who suffered under the old system a feeling of enmity towards the white men, and a jealousy of their superiority.”

But he added :—

“Besides this, they thought they had grievances, which may have been imaginary, but which may have been more or less real. They complained that they could not get justice administered when disputes arose between them. They complained of a serious grievance in respect of what was called ‘the back lands,’ and to which they claimed a right, and from which it was sought to eject them” (p. 149).

And then in his published charge, he appended this note :—

“I understand that the dispute respecting the so-called ‘back lands’ arose under the following circumstances. Land belonging to *one or two estates* running up into the mountains had been thrown out of cultivation, and, as it is called, suffered to run to bush, and the quit-rents due to the Crown had not been paid for a period of seven years. The negroes were told that if they paid these arrears of quit-rent they might cultivate and enjoy the lands rent free. Trusting to this assurance they paid the arrears of quit-rent,” (query, *to whom?*) “and brought the land into cultivation. Some short time before the outbreak, Mr. Hire, the agent of the owner of the *estate in question*, asserted the right of the owner, who had not been a party to the representation made to the negroes, and sought on behalf of the owner to dispossess and eject the negroes, who, however, resisted, and maintained possession by force. Thereupon legal proceedings were instituted against the blacks, which proceedings were pending when the outbreak took place. . . . This is the motive assigned for the murder of Mr. Hire.”

The Lord Chief Justice did not inform the world *from what source* he derived this somewhat confused and obscure statement ; and it is manifest on the face of it that it must have emanated, to some extent at all events, from a partisan source, similar to that whence many other statements or arguments, very eagerly introduced by the Lord Chief

Justice, were derived. It is intimated here, it will be observed, first, that this dispute about "back lands" applied only to "one or two estates;" and then to *one*, "the estate in question," though to *what* estate this was, is not explained. And next, the blacks are represented as morally, if not legally, in the right; though how and from whom their supposed impression was derived, and to whom they paid the arrears of quit-rent, and who told them that on payment of these arrears they might enjoy the land *without payment of rent*, all this is left unexplained. And strong indeed must have been the prepossession and prejudice in the mind of the Lord Chief Justice, which could have led him to lend a moment's countenance to so absurd a representation utterly contrary to history, to the evidence, and to the report of the Commissioners.

As to history, the works of Mr. Gurney and Earl Grey* had shown long ago that this land question was one general in its application and one of long standing, and had its origin in the dislike of the negroes to labour for wages, their preference for irregular and easy cultivation of the land for themselves, their desire to live rent free, and their tendency to squat rather than pay rent.

Then the evidence before the Royal Commissioners and their Report were entirely in accordance with the facts of history on this subject. There was indeed a passage in the evidence of the Attorney-General of the colony, which affords some countenance to the statement of the Lord Chief Justice as to the *nature* of the question, though not as to its extent:—

"There are many disputes as to land. . . . I take the origin of them as this. After emancipation, a number of English proprietors did not choose to continue the cultivation of their estates, and they did not choose to sell them.* They simply left them to grow up in what is called 'bush.' The former slaves squatted there, years and years passed on, and the

* See the Introduction.

people began to think that they had got rights by possession in many instances. There are other disputes as to land, but almost all of the same kind. Eventually a purchaser has come, and he wishes naturally to know the boundaries of his estate, ten, fifteen, or twenty years after these people have been in adverse possession. They go to try to 'run' the lines; they meet a number of people who say, 'You shall not come upon our land,' and they retire, *the people having been armed with cutlasses*. This was the case of Mr. Hire. He wanted to 'run his lines,' and there was a number of people upon an estate that had been abandoned years ago. I said to him, 'What are you going to indict them for?' He said, 'What could I do; could I run the lines?' I said, 'Certainly not; you acted like a prudent man in going back. But what is it you are going to indict the people for?' as *they had used no violence*." (Minutes of Evidence, p. 330.)

So that, according to the ideas of the Attorney-General of the colony, people who had not any legal title to land could, without making themselves amenable to criminal law, assemble together armed with cutlasses, and threaten the ministers of the law, so as to deter them from executing its process, and thus practically by force and numbers, and by terror of violence, defeat the rights of property; and all this without being liable to the criminal law, so as they did not actually cut any one down? The Attorney-General, it is to be observed, stated that such cases were numerous, and of constant occurrence. And such being the notion of the law propounded in the colony, as to the use of terror and force for the purpose of defeating the law and violating the rights of property, and such being the general prevalence of an agrarian question calculated above all others to excite to such violence,—it will be seen that the question was very different indeed, as to its character and *extent*, from that represented by the Lord Chief Justice, and involved deeply-rooted, deeply-seated, and long-standing causes of contest, likely to lead to rebellion, and to render it when it did occur as formidable as possibly could be.

It will be observed that in the above statement of the Attorney-General, which is the nearest approach that can

be found in the evidence to the statement of the Lord Chief Justice, nothing is said as to *payment of arrears of quit-rent* by the blacks, nor can a word about that be found in the evidence. It was evidently derived by the Lord Chief Justice from some unauthentic source. The Attorney-General stated that there were other cases of the kind, other cases of attempts to clear newly-purchased estates of squatters, but he said not a word as to that supposed payment of arrears of quit-rent, which the Lord Chief Justice stated, as giving the blacks a sort of moral right. Neither does the Attorney-General confound these cases with the claim to back lands, for *after* this statement as to squatting, he goes on to say :—

“I never heard of *any right* claimed as to occupy what are called the back lands. The back lands are outlying lands, bush or waste land. Out of an estate of 1,500 acres, probably not above 100 or 150 are cultivated. There may be 200 or 300 acres more kept in grass. Then the rest is outlying land where people squat. *Whether they have a right to do it or not is a different thing*, but undoubtedly they squat. People may have been living upon your land for one, two, or three years together, and you may never know anything about it.”

It appeared, however, from the evidence of Mr. Eyre, and official documents he put in, that the negroes used the term ‘back lands’ as applicable to both classes of cases; and Mr. Eyre stated :—

“Written communications in respect to these back lands (as they are called by the negroes) will be found in the records of the Government officers both before and after the rebellion.” (Minutes of Evidence, p. 987.)

And he put in an official letter some time before the rebellion, thus stating an instance already mentioned as having occurred, and forced his successors to appeal to military force against the negroes :—

“A large tract of land within three miles of the seat of Government has been taken possession of by hundreds, if not thousands, of unauthorised persons, who, by force of arms, prevent all access to the remoter parts of

the settlement, although a public thoroughfare runs throughout its entire length. Violence and rapine reign there unchecked and unnoticed." (Ibid.)

This was the case of an estate which had not been cultivated for some years, and it is obvious that it disclosed a most dangerous state of things that in a colony in which the numbers of the races should be so disproportionate, there should be numerous cases of this class, and a question of this exciting character, so likely to be a cause of rebellion.

It is true that the Attorney-General said that he had not heard of any agitation in the island caused by a claim to occupy the back lands without payment of rent, but this must have meant public agitation, and showed that the agitation on the subject was secret, and so more dangerous, for beyond all doubt there was such agitation amongst the negroes. The Commissioners stated in their Report that "*a principal object of the disturbers of order was the obtaining of land free from the payment of rent, and not a few contemplated the attainment of their ends by the death or expulsion of the white inhabitants of the island.*" It is not strange that an insurrection with such an object, and springing from such deeply seated causes, should have spread, as the Commissioners stated, with singular rapidity over an extensive tract of country. And by the light thus derived from the history and condition of the colony, an immense significance is given to these few words in the evidence against Gordon that he had said to the chief leaders of the insurgents that if the blacks did not get the back lands the whites must all die, and that the blacks must do as they had done in Hayti, but *without* reference to these circumstances such words would lose all their significance. And hence it is not surprising that the Lord Chief Justice, having lost sight of them all, should have failed to see the importance of the language thus proved to have been used by Gordon, and their fatal significance as incitements to

rebellion. Hence for the same reason it was important, in order to arrive at a just estimate of the tone and tendency of his charge, to point out that it was based upon notions and impressions of the condition of the island, and of the relative position of the white and black populations, entirely different from that which could be derived either from history or the evidence upon any authentic source, and calculated to bias and prejudice him exceedingly against those who had been engaged in suppressing a rebellion of the blacks, because leading him altogether to undervalue the real character of the rebellion, and the danger which it involved. One would have thought that the prevalence of these widely-spread feelings, upon a *land question*, showed the formidable character of the rebellion by showing the presence of old and deeply-rooted causes for it. And so the *Commissioners* thought, for they dwelt upon these causes in their Report, and the Recorder in the debate almost indignantly answered Mr. Buxton, when he put forth the view now presented by the Lord Chief Justice, who, as to facts, implicitly followed Mr. Buxton.

"I cannot conceive how the hon. member for East Surrey can have looked either at the Report or the evidence without coming to the conclusion that something far more serious than that which he suggested was the origin of the outbreak. The hon. member told us that candour compelled him to state that there was a certain degree of irritation amongst the black population, in consequence of their being driven from lands which they thought they were entitled to possess. *That was not the origin of the outbreak.* The originators of the outbreak were not persons who had been driven from their lands. They were persons who were settled on their own freeholds to a large extent. No doubt they availed themselves of the general desire on the part of the black population not to retain possession of the land which they had unquestionably taken, but to become possessed of lands which had never been settled upon them in any way, and had never been occupied by them. But there was a general idea on the part of the blacks that what they call the 'back lands,' originally the property of the Queen, had by some grant of the Queen, concealed from them, been made over to the black portion of the island. The originators of the outbreak took advantage of the feeling which prevailed in order to produce that state of discontent which undoubtedly existed."

Unfortunately, however, the Lord Chief Justice had been influenced far more by the inflamed and one-sided statements of Mr. Buxton than the judicial finding of the Commissioners; and hence he utterly failed to realise the danger of the rebellion, and therefore he of course failed to recognise the necessity for deterrent measures, of which the necessity could only be recognised by realising the danger, and without realising which severities would easily appear to have been cruelties.

Thus the Lord Chief Justice, failing to recognise the tremendous difference between Jamaica and England, and between a negro rebellion and an English or Irish disturbance, treated the case throughout as if it had been like a mere riot in this country. Of course under such an impression he naturally thought the execution unnecessary, and almost all the executions excessive.

But the foundation of this view rests on an evident fallacy. There is a moral as well as a legal fallacy in confounding the character of an insurrection of a native or negro population in a colony where they are in an enormous majority, and a mere political rising in this country or Ireland. There is something worse than pedantry in such an idea. It is downright absurdity. In ancient times, indeed, when a large portion of the people were in serfdom, animated by a bitter hatred of their conquerors, there was something which remotely resembled or approached to the condition of such a colony. And in those distant ages, as the Lord Chief Justice hardly ventures to dispute, martial law was exercised, although he strives hard to argue that it was restricted to cases of men taken in arms on the field, or that because it has been for ages absolute, therefore it never was legal; but it is conceived that both these positions are erroneous. Martial law in its fullest sense has long ceased to be exercised in this country, simply because by reason of the altered state of society it has long ceased to be necessary; added to which,

as Hallam observes, the necessity for it, even if it arose, would be much diminished by reason of the Riot Act and the standing army. But, because martial law has long ceased to be necessary, it has not acquired the character of illegality ; and because it is unnecessary in this country as against Englishmen, because Englishmen never rise in rebellion, and never go beyond a riot, it does not follow that it is not often necessary for *the protection of Englishmen* against alien and hostile races of their fellow-subjects abroad.

It would have been impossible for the Lord Chief Justice to deny the exercise of martial law in this country, or even to maintain its illegality, as regards men taken in arms. Nor did he attempt to do so ; the notion, that he laid down anything against martial law in general, is a complete mistake. He was dealing with the case of a civilian who was never actually in insurrection nor proved to have been in arms, and was only sought to be made liable constructively, by reason of incitements to the insurgents. The Lord Chief Justice conceded everything as to men found in arms :—

“A rebel in arms stands in the position of a public enemy, and therefore you may kill him in battle as you might kill a foreign enemy. Being in the position of a public enemy, you may refuse him quarter ; you may deal with him in this respect also as a foreign enemy.” (Charge, p. 25.)

Only this must be after battle. That is the idea of rebellion which one borrows from English history, and of course in that case there never can be any occasion for martial law in this country. But here is the whole fallacy, likening the case of this country to that of a colony inhabited chiefly by an alien race in a state of chronic hostility. The question is one of necessity, and the Lord Chief Justice says, still thinking of this country :—

“Is there any such necessity as is alleged ? Surely, if a rebellion is

raging, men enough will be taken, red-handed, as it is termed, of whose guilt the proofs are patent and at hand. Such cases will furnish ready victims enough, even though the trials should be conducted according to the procedure of ordinary military tribunals" (p. 108).

No doubt, in a rebellion in England, if it were possible, or even in Ireland where it is not probable, because the loyal would be enormously in the majority, and because the rebellion would be carried on by fair contest, not by massacre. But would it be so in a rebellion of negroes in a colony in which their numbers so enormously preponderate as in Jamaica, a rebellion, with the object of extermination of the whole white population, as the Commissioners had reported, and with such deeply-seated causes of dissaffection and such ancient animosities to satiate, as the Lord Chief Justice describes:—

"The old animosity arising from the relation of master and slave, although that relation had ceased, had left probably, even in the minds of the posterity of those who suffered under the old system, a feeling of enmity towards the white man, and a jealousy of their superiority."

No doubt; and it can hardly be thought that rebellion among that race, in a colony where they number well-nigh half-a-million, a rebellion in which they were inspired with such animosities, and in which their object was, as the Commissioners stated, the extermination of the whole white population, a population of about 13,000, and the troops, mostly black, were only 1,000,—that a rebellion under such circumstances can in any way be comparable to any possible rebellion in the United Kingdom. Is it not plain that in any such rebellion the proportions would be completely reversed,—that the loyal would be as half-a-million to a few thousands, and that the army alone would probably be as numerous as the rebels? It is impossible that if he had simply read the statements in the Report as to the number of insurgents actually engaged in the rebellion and the singular rapidity with which it was spreading rapidly among the black population, and had borne in mind the relative numbers of the two races and the small

number of troops in the colony, and had then compared these elements of danger with the exigency of the worst possible or conceivable rebellion in any part of the United Kingdom, or in any part of our dominions except India, it is impossible that he ever could for a moment have dreamt of any possible parallel between a negro rebellion in Jamaica and anything else in the wide world, with the single exception of India. But so far from his having these things in his mind, he never from one end of his charge to the other even *mentions* the relative numbers of the two races in the colony, or the number of troops there when the rebellion broke out, and never, evidently, had realised the tremendous fact that Mr. Eyre, with a few *hundreds*, had to keep down nearly *half-a-million* of a hostile race.

All through, however, the Lord Chief Justice lost sight of the difference between Jamaica and England, and this fundamental fallacy, as it misled him entirely as to the nature and degree of the danger, so it equally misled him as to the culpability of Gordon, the real author of the rebellion, and the necessity for making an example of him. He stated indeed, fairly enough, the *honest belief* of the authorities in the necessity for it; although with flagrant inconsistency he afterwards used very different language:—

“It is enough here to say, that Mr. Gordon was *generally believed by authorities and by the white population* to have been the instigator of the rebellion, and to be an accomplice with those who were actually engaged in it. *It was, therefore, thought right and necessary to make him answerable for the offence of which he was believed to have been guilty.*”
Charge, p. 7.)

But he wholly failed to recognise the necessity for it, or the degree of the man's criminality or responsibility for the rebellion, because he forgot the difference between Jamaica and England, and forgot that language merely seditious here *would mean massacre there*. He forgot that

sedition incitements to a negro population where they are in an enormous majority and have a natural and traditional animosity to the whites, means and naturally tends to rebellion, and that from the circumstances of the two cases *rebellion means massacre*. And hence he used language such as this:—

“It is absurd to give to such language the colour and complexion of treason. To be sure, the deposition makes Gordon say, ‘You must do what Hayti does.’ But, to say nothing of the evidence having been wholly inadmissible, who could believe that by these words Gordon meant to excite his hearers to treason or rebellion ?

“If the man had said, ‘One of these days, if oppression is carried to the utmost, *it may be a question whether you may not have to do as they did at Hayti,*’ such an expression would have been a very injudicious and very improper observation to have made, yet it would obviously not have been intended to *provoke insurrection*” (p. 177).

“It is your duty to speak out, and to act, too ! We advise you to be up and doing. Thus, as freemen, act your part at the meeting,” &c.

“A man must have very acute power of perception who can find in this anything more than the language of an agitator and a demagogue, who, while seeking to stir up strife and keep up excitement in the minds of those whom he addresses, may be far as possible from any intention of actual rebellion or insurrection” (p. 166).

“I think there cannot be the least doubt, that an opinion was universally prevalent in the island that it was through Mr. Gordon’s instrumentality, through his speeches and writings, and the systematic agitation he had for some time been keeping up, that the mutinous and rebellious spirit had been engendered which broke out at last with this unhappy insurrection” (p. 149).

“But, on the other hand, Gordon was a man of too great intelligence to be deluded into the belief that open violence and insurrection would be attended with any beneficial results to the black population.

“Possibly, like many agitators who had gone before him, he was incited by the gratification which proceeds from the consciousness of power arising from the exercise of dominion over the minds of men ; by the sense of self-importance which results from occupying the attention of the public ; by the gratification which arises from the applause and admiration of the multitude ; and while it suited his purpose to keep the passions of the black population in a state of ferment bordering upon outbreak, he persuaded himself that by the mastery he possessed over them he could keep them under subjection and control” (p. 151).

“That this did produce a state of excited feeling which, when the torch, so to speak, was applied to the train, exploded in this terrible

calamity, I think there cannot be the shadow of a doubt. But so far from there being any evidence to prove that Mr. Gordon intended this insurrection and rebellion, the evidence, as well as the probability of the case, appears to me to be exactly the other way" (p. 152).

It is obvious that the Lord Chief Justice was thinking all along more of England than Jamaica, and failed to realise the *difference* between England and Jamaica. It may indeed be doubted whether the above passages are not wrong according to English law, ignoring as they do the well-known doctrine that a man must be taken to intend the *natural consequences* of his language. The *practical application* of that doctrine, however, depends, it is obvious, upon the circumstances of the country, as language may have a fatal significance addressed to the population in one country which would be harmless in another. And that the Lord Chief Justice failed to realise this, and therefore fell into the most manifest fallacy, can be shown out of the mouth of Gordon himself, the man whom he was defending, with all the skill and energy of an advocate. The Lord Chief Justice said:—

"Mr. Gordon was a man of too much intelligence to be deluded into the belief that open violence and insurrection would be attended with any beneficial results to the black population. He could not have supposed that the negroes, undisciplined, unorganised, unarmed, unprepared, could stand against such forces as could speedily be brought against them. He must have known that even a temporary success must necessarily be followed by the application of the force of the country to subdue the rebellion, and that it could only lead to disaster. I think it therefore next to impossible that he could have contemplated the outbreak" (p. 152).

To which the best answer is in the words of Gordon himself; when a friend to whom he spoke of rebellion urged that it was hopeless, Gordon said:—

'Ah! you are quite mistaken here. *All the power of the great Napoleon could not put down the rising in Hayti, and that was successful*, for the troops died of disease before they could meet the people in the mountains. (Minutes of Evidence, p. 389; Report of Royal Commission.)

No one can doubt that Gordon was right and the Lord

Chief Justice was wrong; Gordon knew the difference between England and Jamaica, and even between India and Jamaica. The Lord Chief Justice *forgot* it. And the presence of this fallacy perverted his whole view of the facts, and therefore prevented his whole view of the necessity for the execution. It may be gravely doubted whether, if he chose to go out of the evidence before him, (which he had no right to do, except perchance in favour of the accused parties before him,) he was not bound to tell the grand jury what the Commissioners had reported, that Gordon had for months been brooding over rebellion, and *had spoken of it as inevitable to his intimate friends*. In the face of this, the Lord Chief Justice, unnecessarily, improperly, goes out of his way to tell the grand jury that he is sure, in the face of Gordon's own words, Gordon had no idea of rebellion! This unhappily is not the worst. The Lord Chief Justice went on:—

"I can quite understand, considering all that he had said and done, and that he had been the master spirit that had fostered and kept alive this discontented spirit among the negro population, that after the insurrection broke out the authorities should be led to suppose that he was at the bottom of it, and therefore thought it right to institute proceedings against him. It may have been that Colonel Nelson and the members of the court-martial, participating in the general belief in Mr. Gordon's guilt, may have suffered their minds to be unduly operated upon thereby to his prejudice, yet without any imputation upon the honesty of their intention. On the other hand, it is possible that, thinking that Gordon was the cause of the calamity that occurred, and that though there might not have been any intention on his part that there should be a rebellious outbreak, he was, nevertheless, so morally responsible for it that he ought to be brought to condign punishment, and that such an example would have the effect of at once annihilating the insurrection, and that his removal should be for the future peace of the island, they *determined upon his destruction*" (p. 152).

"It may be that, in furtherance of this purpose, the parties now accused enacted their respective parts in the condemnation and execution of the deceased!" (p. 157). "It is for you to say what you think is the true solution of the matter. It is entirely a question for the exercise of your judgment."

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The most fitting answer to this is in the words of the Lord Chief Justice himself, who at the opening of his charge had said, with perfect truth :—

“Mr. Gordon was generally believed by the authorities, and by the white population, to have been the instigator of the rebellion, and to be an accomplice with those who were actually engaged in it. It was therefore thought right and necessary to make him answerable for the offences of which it was believed he had been guilty” (p. 7).

Yet the Lord Chief Justice, having thus already told the grand jury, what was manifest truth, that the authorities honestly believed Gordon's execution to be both just and necessary, he afterwards suggests to them the monstrous notion of a conspiracy to get rid of him without sufficient evidence ! He elsewhere put this more distinctly, speaking of the man's removal into the district under martial law, with which, as he himself said, he had nothing to do, the prosecution being against the military officers who had *tried* him, and the legality of the *trial* not being affected by the removal ; so that all he said on the subject was irrelevant and extra-judicial ; he admitted the right of the Governor and Custos to *arrest* the man but not to remove him for trial under martial law, though he had already stated that they believed that he had caused the rebellion, the very rebellion for suppression of which martial law existed, and that his trial was necessary for its suppression. They might *arrest* him he admitted :—

“But for what purpose ? In my judgment the only purpose for which they could legitimately apprehend him, in order to hand him over to the civil tribunals, which had power to take cognizance of the offence. The power to arrest is sacred from the ordinary law. The duty which attached upon the apprehension of an offender under such circumstances is immediately to hand him over to the first civil authority which can be found.”

“These two gentlemen were not the ministers or apparitors of the martial authority. They had no power *devised from the military authorities* to take up this man for the purpose of handing him over to the martial law” (116).

“Nevertheless they did it. They did it by the strong hand of power. Indeed that has been avowed, and the *motive for it has been avowed*, viz.,

that it was thought that a conviction could not be got at Kingston ; therefore they took him from Kingston, where there was no martial law, and where he was safe, to Morant Bay, where there was martial law, *and where a military tribunal could be found to try and condemn him*" (114).

And then upon this the Lord Chief Justice says :—

"I entertain a *very strong opinion* that the whole proceeding, the seizing him, to bring him to Morant Bay, and handing him over to the military tribunal, was altogether unlawful and unjustifiable" (114).

Now the fitting comment upon this is a passage from the *evidence* before the Lord Chief Justice at the moment he uttered these words. The statement of Colonel Nelson was in evidence, it was the *only* evidence upon the point except his letter, which confirmed it, and it contained this :—

"The only instructions I had from Mr. Eyre were, to examine the evidence, and see if it was sufficient, and if so to prefer such charge as I thought proper." (Evidence of Colonel Nelson, Minutes of Evidence, p. 625.)

And the letter of Colonel Nelson, written at the time, was entirely in accordance with this, and ran thus, addressed *not* to Mr. Eyre, but to the Commander-in-chief :—

"After six hours' search into the documents, I found that I *had sufficient evidence* to warrant my directing his trial. . . . I prepared the charge and *precis* of evidence for the Court. . . . I carefully perused the proceedings, and considered it my duty fully to approve and confirm. I enclose the whole of the proceedings of the Court for *your* information. *I have not furnished any report to the Governor*, but to you, my commanding officer, hoping for your approval."

Here, therefore, upon the evidence before the Lord Chief Justice, the Governor, who ordered the removal of the man, did not direct his trial at all ; but left that to the military commander upon his responsibility, *if there should appear sufficient evidence*, and the military commander determined this upon his own responsibility, subject to the approval

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of the Commander-in-chief, *to whom*, and *not to the Governor*, he reported the proceedings! And it appeared that the Commander-in-chief approved and sent them to the Governor, whose part in the matter was simply that he saw no reason to interpose to prevent the execution of the sentence. And the Lord Chief Justice himself shows why; for he had stated:—

• “Mr. Gordon was generally believed by the authorities and the white population to have been the instigator of the rebellion, and to be an accomplice with those who were actually engaged in it. *It was therefore thought right and necessary to make him answerable for the offences of which it was believed he was guilty.*” (Charge, p. 7.)

Nor is this all. It appeared on the Minutes of Evidence, that the Commander-in-chief, who was at variance with the Governor, and quite independent of him, was of opinion that the circumstances of the colony called for prompt and decisive action in the case; in other words, for the prompt execution of Gordon. In the face of all this, the Lord Chief Justice suggests a conspiracy to get rid of the man, and a conspiracy between the Governor and Colonel Nelson, who was responsible *not* to him, but to the Commander-in-chief! Is it possible to conceive a greater confusion of ideas; grosser inconsistency, or more grievous injustice!

The only pretence suggested by the Lord Chief Justice for this suggestion is that in his view the evidence was insufficient to sustain the charge. In this indeed he only followed the Commissioners, who, however, as already has been shown, while carefully confining themselves to the charges on which he was tried—that is, the *formal* charges, treason and murder—state that the charge recited and included that the prisoner had excited the insurgents to insurrection. This would be a capital offence under military law, *and the man was tried under military law*. The Commissioners wholly forgot this, and confined themselves to the common law charges, which no doubt were the *formal*

charges, quite overlooking the substantial charges included in them, of inciting to insurrection. And they equally overlooked that even at common law a man is liable for the natural consequences of his words, and that if he incites others to murders, and they commit the murders, he is liable for them. And the Commissioners found facts clearly showing that Gordon had used language calculated to incite the insurgents to insurrection and murder. So that, upon their own showing, he was clearly guilty, *both* upon the military charge and on the common law charge; and their finding that the evidence was insufficient to establish the charge upon which he was tried, was equivocal, and founded upon a two-fold error in law. The Lord Chief Justice followed them in both these manifest errors; and in the first place argued as if the man had been tried under ordinary law! as if he had been tried by court-martial for a common law offence! But if the man could be tried at all by these officers, he was liable under *military* law, and by that law the mere incitement to sedition is capital, and whether or not there is a particular treasonable intent, and whether or not the incitement takes effect. And again, even on the common law charge—if a man has incited others to murder, or to insurrection, likely to lead to murder, and the incitements have taken effect, then he is guilty of the murders. Totally ignoring both these matters of law, the Lord Chief Justice treated the charge as if it was an indictment for treason, construes it strictly, and rigidly considers the evidence according to the regular rules of law, and then declares the evidence so insufficient as to warrant a suggestion of conspiracy to get rid of the man without adequate evidence of any crime at all! whereas his impression of the insufficiency of the evidence entirely arose from his misconception as to the law—whether as regards the nature of the jurisdictions under which the man was tried, or the nature of the charges against him. Not

having been able to make up his mind as to the legality of military law in the case, because he had so utterly failed to realise the *danger* of the case, the Lord Chief Justice never recognised the fact that, rightly or wrongly, it *was* under military law that the trial took place, even although he denounced in the strongest terms the removal of the man for the purpose of trial by military law: a strange inconsistency, for if the man was after all to be tried by the rules of common law, what did it matter? The Lord Chief Justice indeed treated it as if it were a mere difference of *tribunals*, and asked with some indignation, whether it made any difference in the quality of the offence, whether the man was tried by one tribunal or another. Why no! certainly not; assuming the law to be the same and the offence to be the same; but a difference of *law* makes all the difference in the world as to the quality of the offence, and the nature of the offence makes all the difference in the world as to the sufficiency of the evidence; for, of course, the evidence which will prove one offence may not prove another. And the Lord Chief Justice never recognised that a different *law* was temporarily in force, because he had not realised the *necessity* for it. Yet, in fact, there could be no doubt military law was in force; for how else came three officers to be trying a man, not a soldier of the Crown? And the Lord Chief Justice could not make up his mind that this was illegal, and never ventured to say that it was. On the contrary, he implied that it *was* legal; for he argued that martial law meant the application of military law, which, indeed, he admitted under a twofold error—a notion that, in time of war, regular military law applied to soldiers, and a notion that, assuming regular military law to be applicable, it had not been observed. But he was in error upon both points. As to the first, he himself said that in time of war the Crown is absolute over

its soldiers, and he forgot that in law rebellion is war. So that if martial law, as to rebels, means military law, as to soldiers it means absolute irregular military law. But if it means *regular* military law, the Lord Chief Justice was equally wrong; for regular military law had been substantially observed (although he thought otherwise), that is, in the constitution of the courts and the substance of the charge, and the general course and character of the proceedings. So that in the admissions of the Lord Chief Justice himself the whole was legal. These, however, were unintentional admissions as to mere legality; and the Lord Chief Justice denounced the proceedings in substance, because he had never recognised that military law was in force, and this because he had never realised the *necessity* for it. Thus it was that prejudices seemed, from his preconceived view of the facts, to have warped and perverted his view of the law; or rather had prevented him from giving any decided judgment upon it at all.

Yet all the reasons upon which military law rests as to soldiers, and which have been abundantly expounded by our judges apply equally, or rather *à multo fortiori*, to a formidable rebellion. For the reasoning rests, in a word, upon *danger*. It is said to be dangerous to the State that bodies of armed men in the service of the Crown should be allowed, without the stern control of military law—a code quite different from the civil code, with pains and penalties of its own infinitely more severe, *on account of the greater danger*. Thus, for instance, upon the principle that seditious incitements addressed to men with arms or offensive weapons in their hands are infinitely more dangerous than if addressed to mere civilians who are presumed to be, and ordinarily are, unarmed, therefore by the Mutiny Act, even in time of peace, incitement to sedition is, *per se*, a capital offence, and this whether or not the incitement takes effect, and whether or not it is with a treasonable intent. The Act says:—

"That if any person subject to the Act shall *begin, excite, cause*, or join in any mutiny, or *sedition* in any forces of her Majesty, or *shall not use his utmost endeavours to suppress it*, or shall conspire with any other person to cause a mutiny, or coming to the knowledge of any mutiny, or intended mutiny, shall not, without delay, give notice thereof to his commanding officer, or shall hold correspondence with, or *give advice* or intelligence to any *rebel or enemy* of her Majesty, whether such offence be committed within the realm or in any other of her Majesty's dominions, or in foreign parts, shall *suffer death*, or such other punishment as by a court-martial shall be awarded." (Mutiny Act, s. 15.)

Now, after expounding regular military law, the Lord Chief Justice asks :—

"*If such be the law as applicable to the soldier, why should it not be the law applicable to the civilian ?*" (99).

The only answer is—To be sure! Why not? Why should a soldier of the Crown be liable to be hanged if he incites his fellows to mutiny, and why should a rebel *not* be liable to the same penalty if he incites his fellow rebels to revolt? That is, supposing it is in a really formidable rebellion, which requires the application of these extraordinary penalties. The Lord Chief Justice puts the same position more formally elsewhere, when he says :—

"It is certain that the Crown has absolute power to legislate for the Government of the army in time of war" (Ibid. p. 69).

He forgets, indeed, to add that rebellion is war ; but he implies it elsewhere, when he says :—

"We are not dealing with the case of rebels killed on the field of battle, or *put to death afterwards without any trial at all*. A rebel in arms stands in the position of a public enemy, and therefore you may kill him in battle, or may refuse him quarter" (25).

It is true, he restricts this to rebels taken in arms, but this, which involves the whole *principle* of martial law, is an arbitrary restriction of his own, without either reason or authority to support it, and contrary to both. For the

only reason why rebels taken in arms may be executed summarily is that the *danger* is so great as to *require* it, and this would be an equal justification in the case of a rebel not *taken* in arms, but found to *have been* in arms, if the danger was deemed to require it. And no one would think *à multo fortiori* of the case of a leader of the rebels, or of one who had *incited* others to rise in arms, and so had caused the rebellion. It is neither more nor less than a *reductio ad absurdum* to say that *they*—the dupes and tools—may be dealt with summarily, and that *he* cannot be, although *his* execution would be, of all others, most obviously just, and most likely to be deterrent. Yet such was the position taken by the Lord Chief Justice! The reason was, that his notion of danger and necessity was far too narrow, and the reason of *that* was that he was thinking, all through, not of a rebellion, but of a riot—a mere casual disturbance. This is manifest throughout. He allows of anything as regards those caught in actual outrage. He says:—

“ If a rebellion is raging, men caught will be taken red-handed, as it is termed, of whose guilt the proofs are patent and at hand. Such cases will furnish readily victims enough, even though the trials should be conducted according to the procedure of ordinary military tribunals ” (108).

Here, again, he admits the whole principle of martial law, and allows of its sternest exercise in cases of men taken in the act of outrage; but he has a strange tenderness for the man who *has urged them to such outrages*. The only reason for this that can be suggested is that he did not realise the *danger*, and, therefore, the *necessity*, for such an example. This lay at the root of all his notions of the matter, and rendered him an easy prey to the bold and ingenious fallacies of Mr. Fitzjames Stephen, the talented counsel for the prosecution. These fallacies the Lord Chief Justice reproduced, as already observed, with remarkable and fatal fidelity. Thus, for instance, the passages above cited correspond exactly with

the argument of Mr. Stephen, that martial law might be allowable as to those taken in arms, or in actual outrage, but not as to others, and that the necessity which justifies the exercise of martial law must be a present imminent *local* necessity arising at the particular place, the scene of the execution. Speaking of a witness who had admitted that he himself had sat upon courts-martial, the learned counsel said :—

“I asked him what were the crimes for which he ordered persons to be executed, and his answer was, for murders, arsons, burglaries ; and he told you also that he was at Morant Bay and Port Antonio, and in that neighbourhood, for ten days after the insurrection ; that he saw no violence whatever ; that he saw not one single act of resistance to the troops—nay, that he never even heard of any. At the same time he executed persons, I say, wrongly, no doubt ; but he punished them for crimes of murder and arson, and so on, for taking part in the actual riot. However, his conduct is not now before the court, and it is not necessary to investigate it. He, no doubt, considered, as Colonel Nelson did, that he had a lawful right to punish them. I say he had not ; that his duty was only to suppress the insurrection. How far it might be necessary to execute those men we have no evidence, and I can say nothing about it ; but there is a vast difference between what he did and what Colonel Nelson did, if you look at it in point of necessity.”

That is, because there was no *present pressing imminent* necessity in the sense in which the common law allows of the killing of men *in the very act of attempting felonious outrage !* It is obvious that this was confounding common law with martial law. The counsel for the prosecution would not allow of the trial and execution even of those who had actually taken part in acts of murderous insurrection, unless taken in the act. The Lord Chief Justice went perhaps a step further than that, but scarcely a step. The reason is obvious, because he took the same inadequate view of the *danger*, and the same narrow notion of necessity. And the cause of that was, that he was thinking of a riot, whereas the case was one of a dangerous rebellion.

So, as to the constitution of the courts, the counsel for

the prosecution said the court was illegal, because not according to the regular military law :—

“The Mutiny Act which was passed in 1865 says (and a similar provision is contained in the other Acts), that no court-martial shall inflict sentence of death unless it be composed of thirteen members. This was a court composed of three officers, belonging to different services: two sailors and one soldier, sitting on land and trying a civilian for a civil offence. It might be what it liked, but it was not a court-martial according to any law that he had been able to discover on the subject. It was as gross an abuse of language to call such a body a court-martial, as it would be to call a casual meeting round the mess-table a court-martial.”

This was the sort of language which had been used in the popular newspapers, and not only so, but by speakers in Parliament, upon the subject, in order to cast obloquy upon the court-martial. The mistake was a flagrant one, and illustrative of the fallacy which pervaded the whole case. It lay in forgetting the special provisions made for distant colonies, on account of their remoteness and the extraordinary danger of any exigency or emergency. On this account, the Mutiny Act carefully provides :—

“A detachment general court-martial shall have the same power in regard to sentence upon offenders as a general court-martial, but no sentence of a detachment general court-martial shall be executed until the General in command shall have approved and confirmed (s. 124). *Where it is necessary or expedient, a court-martial composed exclusively of officers of the army, or of officers of marines, or of officers of both services, whether the commander belonged to our land or marine services, may try a person belonging to either of those services; and when the person to be tried shall belong to the army, the proceedings shall be regulated as if the court were composed only of officers of the army*” (s. 146).

“Any officer commanding any detachment serving in any place beyond seas, when it may be found impracticable to assemble a general court-martial, upon complaint made to him of any officer against property or person of any inhabitant, &c., may assemble a *detachment* general court-martial of not less than three commissioned officers of *any* corps to try that person.

“No court-martial, *other than* a general court-martial, or a detachment general court-martial, having the same powers as a general court-martial, shall have power to *pass* any sentence of death or penal servitude.

“*A detachment general court-martial shall have the same powers in regard*

to sentence upon offenders as a general court-martial ; but no sentence of the court shall be executed until the General shall have appeared."

Ignoring all this, which showed the perfect legality of the court-martial under regular military law, the Lord Chief Justice, following Mr. Fitzjames Stephen instead of the Mutiny Act, said :—

"If, for the reasons already pointed out, a court-martial to try a civilian under martial law must be constituted according to military law, then the tribunal which was composed of two officers of the navy and one officer of the army was ill constituted, and its proceedings were null and void. *For there is nothing in the acts relating to the military or naval services, nothing in the practice or usage of military tribunals, which authorises the mixing of officers of the two services of the army and navy on the same court-martial*" (122).

In this, it will be seen, the Lord Chief Justice was entirely in error, and the court-martial was perfectly legal according to *regular* military law, which, according to the Lord Chief Justice, *applied*. For, after expounding its *substantial* provisions, he said so :—

"The charge must be distinctly specified, the evidence must be such as any ordinary court of justice would receive ; the accused has the fullest opportunity of defence ; the witnesses must be confronted with him ; he has the opportunity of cross-examination ; he has the fullest opportunity of being heard ; he has the right to call such witnesses as he thinks fit" (98).

"Now, if such be the law as applied to the soldier, why should it not be the law applicable to the citizen ?" (99).

Precisely so ! Why not ? And, accordingly, it had been so applied. The Commissioners themselves in their Report so stated of the great majority of the trials, and mentioned only some half-dozen exceptions ; and they said nothing to the contrary in Gordon's case : the strongest expression they used was, that, as to a particular matter of no great importance, it "would have been more satisfactory" had a different course been taken. A marked contrast to the tone of the Lord Chief Justice in speaking of the case !

So again as to the next substantial matter, the substance of the offence charged, and what it involved, upon which of course the sufficiency of the evidence must depend. Here again the Lord Chief Justice was misled by Mr. Fitzjames Stephen, who, however, upon the fundamental point, the nature of the charge, was nearer to the truth and to the Report of the Commissioners than the Lord Chief Justice, though for that reason he was betrayed into more obvious inconsistency. The learned counsel, herein following the Royal Commissioners, stated the charge to be in effect *inciting to insurrection*, for he thus cites it, correctly enough :—

“That the said George William Gordon did, in furtherance of the said massacre, at divers periods previous to the same, incite and advise with certain of the insurgents, thereby by his influence tending to cause the riot, whereby many of her most gracious Majesty’s subjects lost their lives when assembled in lawful consideration of parochial and other matters.”

That is to say, he treated this as the pith and substance of the charge, seeing that it was the *substantial matter of fact* charged, viz., that the prisoner had *incited the insurgents to insurrection*; although it is true that the military commander drew out *formal* charges thereupon, embodying what he supposed to be the *legal effect* of the fact, viz., treason and murder. The learned counsel rightly enough stated the *substance* to be inciting to insurrection, and he based an *argument* upon it, for he said :—

“The charge, therefore, was of having incited and advised with certain of the insurgents at divers times previous to the 11th of October. It did not say that Gordon knew of the riot, or that he advised the riot, or that he was an accessory before the fact to the riot, but that by his influence he tended to cause the riot. The very gist of the matter was something anterior to the insurrection itself.”

An objection obviously technical, and ably exposed and refuted by Mr. Hannen, as the charge was for inciting the *insurgents*, who had risen in the particular rebellion, and the effect of the incitements was *continuing*; and there-

fore the liability for the incitement as much existed under martial law as before, and so the man was amenable to martial law, if any one was; and *more* so than any one else, seeing that he had caused the whole mischief. But the point to be observed is, that the counsel for the prosecution stated the substance of the charge to have been *inciting to insurrection*, a charge, it has been seen, capital by military law, though *that* he did *not* mention, any more than the Lord Chief Justice. If he had, it would have been manifest that the conviction was right, because it was stated by the Commissioners, and admitted by the Lord Chief Justice, that the man *had* incited to insurrection. The Lord Chief Justice, less correct than the Commissioners, or less candid than the counsel for the prosecution, actually *omitted all mention of the real substance of the charge*, and stated the mere formal version of them. He said:—

“The charges were these—‘high treason,’ and complicity with the parties who were engaged in the rebellion or insurrection.”

And the whole tenor of his observations implied that this meant an actual complicity, in the sense of *privity to the particular outbreak*, or a design for an outbreak on *that particular occasion*; though even at common law this would not be required; since a man who incites others to murder is guilty of murder *whenever they* do it, and whether or not they do it at a particular time which he has indicated. But, above all, the Lord Chief Justice took no notice of the real substance of the charge—inciting to insurrection,—nor mentioned that this was a capital offence under military law, whether or not the incitement took effect, and whether or not it was with the particular intent of treason or murder. On the contrary he plainly intimated to the jury that *express proof of the particular intent* required for a capital offence at *common law offence* would be necessary. Here it was he was most misled by

Mr. Fitzjames Stephen, who, forgetful of the doctrine laid down in his own interesting work—the “View of the Criminal Law”—that intention may be presumed from the natural tendency of a man’s acts or words, urged this point, which had been taken by Mr. Gordon’s attorney, in language followed with curious fidelity by the Lord Chief Justice :—

“If there be one thing more than another clear in the criminal law, it is that intention is of the essence of crime,” &c.

The learned counsel had built upon this an argument which had been thus expressed by an attorney on behalf of Gordon :—

“That only is crime which is prompted by criminal intention, and that you, having no such intention, are not criminally liable for the consequences, however disastrous these unhappily may have been.”

And he threw blame upon the military commander for not communicating this to the Governor; forgetting that the military commander *himself* was the proper person to consider the plea, since, if valid, it went to show that the evidence was insufficient without *express proof* of intention; whereas the plea was perfectly idle, and the military commander rightly overruled it. In all this the learned counsel was followed implicitly by the Lord Chief Justice, who said, almost in the language above used :—

“I must take the opportunity of observing that *intention is at all times the essence of crime*. I have seen it written, and I confess I almost shudder as I read it, that it was justifiable to send Mr. Gordon to a court-martial to be tried, because a court-martial would be justified in committing a man when mischief had resulted from acts of his, although that mischief had been entirely beyond the scope of, or even contrary to, his intention; as if it could make any difference in the quality of the offence for which a man was tried, whether he was tried by one tribunal or another.” (Charge, p. 154.)

And then he cited passages from the author’s work, to the

effect that under *martial law* a particular intent was *not* of the essence of an offence. But the Lord Chief Justice forgot that, though it makes no difference in the quality of the offence whether a man is tried before one tribunal or another, yet it makes all the difference in the world whether a man is tried *under one law or another*, and he might have seen from the passages of the author's work he cited that the author was writing of *martial law*, that is, of *military law*, which the Lord Chief Justice must surely know well enough has offences and penalties of its own, quite different from ordinary law, and *not* requiring any particular intent, still less any express *proof* of it, beyond that afforded by the act itself, as, for instance, incitement to insurrection. The framers of the Mutiny Act who made that capital, never dreamt of the nonsensical notion which, for the first time, was put forth in this case, that a man could incite to insurrection without intending it; for to do so he must use language *calculated* to incite to it, and *that the law considers proof that he intended it*. The only reason, therefore, why the Lord Chief Justice shuddered was, that he was entirely in error; and it would have been far better if, instead of "shuddering," he had *simply read the Mutiny Act*, and referred to the decisions of his own court, in which it is laid down that *criminal intention is to be presumed from the natural consequences* of a man's acts. He could find no countenance there for the monstrous and mischievous notion that men may incite to insurrection, so as to *cause* an insurrection, and yet be permitted to say, "Oh, dear! I really did not intend it!" Under the influence, however, of these most mischievous misconceptions the Lord Chief Justice made the most cruel imputations upon the authorities, and especially on the officers concerned—the courts-martial. He said:—

"But it is said that the necessity for suppressing rebellion is what justifies the exercise of martial law, and that to this end the exhibition of martial law in its most serious and terrible form is indispensable. *If by*

this it is meant that examples are to be made without taking the necessary means to discriminate between guilt and innocence, and that in order to inspire terror men are to be sacrificed, whose guilt remains uncertain, I can only say I trust no minister of justice will ever entertain so odious and fearful a doctrine" (108).

What conceivable ground was there for this suggestion? It simply had its origin in entire misconception as to the nature of the law in force, the real nature of the charge, and one of the most elementary doctrines of criminal law.

It must be manifest that the Lord Chief Justice never recognised that the trial was under military law, and never realised the *necessity* for it, because he never realised the difference between a negro colony like Jamaica and this country, and never realised the tremendous danger arising from a negro rebellion in a colony where they are in an enormous majority, and in which there was "a mere handful" of military. Therefore he never recognised the necessity for military law, and never realised its existence. Had he in the least realised the *danger*, he would have recognised the *necessity*—that is, the necessity for the stern severities of military law. Mr. Eyre *did* realise the danger, and therefore *did* recognise the necessity. And he would find it laid down in a military text book of authority :—

"When martial law is proclaimed, courts-martial are thereby invested with such a power of summary proceeding that neither time, place, nor persons are considered. Necessity is the only rule of conduct. Nor are the punishments which courts-martial may inflict under such an authority limited to those which are, under ordinary circumstances, prescribed by the Articles of War. They may inflict the punishment of death even, where the imperious necessity of the case and the existing circumstances warrant it, when such a penalty would not for such cases be visited with such severity by ordinary law ; but such powers cannot be assumed, they must be duly delegated by proper authority." (Hough on Court-Martial, p. 383.)

The question, as regarded the *culpability* of Mr. Eyre or the military authorities, was not whether they were

or were not strictly and legally right, but whether they might not reasonably *believe* that they were; and how could they have thought otherwise, according to the authorities? It is added:—

“The distinction between martial law and military law is this: *that martial law extends to all persons*, military law to all military persons, but not to those of a civil capacity.” (Ibid., 384.)

And if he referred to the latest work on the subject, he would find it there stated as having been laid down by Lord Brougham in the Demerara case, already alluded to:—

“That the *proclamation of martial law renders every man liable to be treated as a soldier.*” (Simmons on Court-Martial, p. 97.)

So that he would naturally draw the inference that, so long as martial law was to be maintained, the ordinary tribunals were not to be resorted to, but military tribunals. And again he would find it stated in the same work, drawing a distinction in that respect between martial law as allowed by the common law and as it may be allowed by statute, and pointing out that, as to the *latter*, it is intended to continue in operation although the ordinary courts *could* sit:—

“The proclamation of martial law renders all persons amenable to courts-martial, on the order of the military authority, so long as the course of ordinary law does not take place.”

And he would also find it laid down in the Articles of War and the Mutiny Act:—

“That any one subject to the Act who shall begin, excite, cause, or join in any mutiny or sedition, shall suffer death.” (Art. 40, Mutiny Act, s. 19.)

And he would find it laid down in most approved books of military law:—

“A mutiny is not only a rebellion or rising against lawful authority, or an insurrection, or a conspiring together, but a murmuring or uttering even against the exercise of authority in the hearing of the soldiers, to raise, or *having a tendency to raise*, ill humours or passions, or to stir up

disquiet or sedition in the army. It is not, therefore, necessarily an aggregate offence, committed by many individuals, for it may originate and conclude with a single person, and be as complete with one actor as one thousand." (Hough's Treatise on Court-Martial, p. 68.)

Such is military law, and such, according to the view of the Lord Chief Justice, is martial law. For the most remarkable feature in the matter was this, that it is entirely immaterial what view is taken of martial law; for even according to the view of the Lord Chief Justice of England, Gordon was rightly tried. For he urged that martial law meant regular military law; that it is the military law laid down in the Mutiny Act and Articles of War, after expounding which, he asks:—

"Now, if such be the law applied to the soldier, why should it not be the law applicable to the civilian?" (Charge, p. 99.)

Why not, indeed? Why should the "civilian" in rebellion be better treated than the soldier in mutiny? But if so, Gordon was rightly tried, and therefore rightly removed; for, if he was rightfully liable to trial, he was liable to removal for the purpose of trial, for the offence of inciting to rebellion, and that was capital. As, therefore, according to *military* law—which, according to the Lord Chief Justice, was in force—there could be no doubt as to the man's liability to a capital penalty, since the Lord Chief Justice admitted what the Commissioners had stated—that he *had*, in fact, incited to insurrection;—the question, as to any *culpability* for Gordon's trial, resolved itself simply into one of apparent necessity for making a speedy example of him. The Lord Chief Justice himself states that the authorities really *believed* in this necessity, though he does not state that the Commander-in-chief was of opinion that the circumstances of the colony called for prompt and decided action in the case, which would of itself exculpate Mr. Eyre. But having stated that such was their honest belief, it is lamentable that he should

have allowed himself to say, as to the removal of the man, which, of course, was necessary to make him practically *amenable* to martial law, and would be justifiable if he was *legally* amenable to it, and if it was necessary to make him so amenable in order to make an example of him—

“Crime is in a legal sense local, and that according to the laws of England a man may be tried where the offence is alleged to have been committed. There are indeed exceptions to this rule. Some offences may, from their very nature, be said to be committed at the same time in more counties than one; so, in the case of conspiracy, the conspirator may be tried *either* in the county where the conspiracy was entered into, or where it was carried into operation. But it does not follow that if a man is capable of being tried in one of two counties, and you have got him in a county where he may be tried, you can send him into another where he may also be tried, simply because *you are more likely to get a conviction*, or that justice is going to be administered by a sterner judge, who will be likely to measure out a larger amount of punishment” (p. 116).

It does not appear to have occurred to the mind of the Lord Chief Justice that, if, as he says, the authorities honestly believed it was necessary to make a speedy example of the man believed to have caused the rebellion, it was necessary that the trial should be by military law; and that if, indeed, he had caused it, he was, above all others, *amenable* to military law. Neither does it appear to have occurred to the Lord Chief Justice that there is all the difference in the world between trying a man by a different tribunal, in order to convict him without sufficient evidence, and trying him under a different law, to which he is justly amenable, and under which the evidence is sufficient.

The question reduces itself to this, whether it was just and necessary to make the man amenable to military law? The authorities thought it was, and in so thinking the Governor had the support of the Commander-in-chief, who, so far from being in collusion with him, was at constant variance with him. It is to be lamented that the Lord Chief Justice, who travelled so widely into the

facts, never adverted to *that* fact, which was conclusive as to the *bona fides* of the Governor. In place of this, the Lord Chief Justice made the most irrelevant and unwarrantable imputations upon Mr. Eyre and Colonel Nelson for the removal of Gordon—imputations equally irrelevant and inconsistent with the evidence, and, being mere matter of fact, entirely out of his legal province. The indictment in that case was against Colonel Nelson for the trial and execution, he having nothing to do with the *removal*. So that, to begin with, the matter was irrelevant. In the next place, the only *evidence* before him was that of Colonel Nelson, whose statements were put in, and who stated that—

“Mr. Eyre gave him no instructions except to ‘examine the evidence, to see if it was sufficient, and to have Gordon tried if it *was* sufficient, and if it was proper, in his view, to have him tried.’” (Minutes of Evid., pp. 622—625.)

That was the *evidence before the Lord Chief Justice*, upon which he said to the grand jury that those gentlemen, the Governor and Custos, had “no power derived from the military authorities to take up this man for the purpose of handing him over to the martial law.” That was, it will be observed, no proposition of law, though it probably appeared to the grand jury to be one. And the Lord Chief Justice never laid it down as a proposition of law that removal into a district under martial law is necessarily illegal. That would have been a legal proposition; but he has nowhere laid it down, and it would be clearly contrary to the opinion of the twelve judges in Lundy’s case. (See Review of the Authorities.) But he merely said that the Governor had no power “*derived from the military authorities*” to remove the man. As if the Governor would *desire* authority from them!—or as if a Governor could not arrest a man for sedition and convey him to the proper place for trial, which, if the man were justly *amenable* to martial law, would be the district *under*

martial law. And then the Lord Chief Justice went on to say to the grand jury—the evidence before him being that Mr. Eyre had submitted to the military commander whether the evidence was sufficient, and had desired that the man should not be tried unless it was so—

“They did it by the strong hand of power. Indeed it has been avowed, and the motive of it has been avowed, viz., that it was *thought that a conviction could not be got at Kingston, therefore they took him from Kingston, where there was no martial law, and where he was safe, to Morant Bay, where there was martial law, and where a military tribunal could be found to try and condemn him.*” (Charge, p. 114.)

The author was not aware that this had ever been avowed, and he believes it an entire hallucination. Then, upon that, the Lord Chief Justice immediately added:—

“I entertain the very strong opinion that the whole proceeding—the seizing him, and handing him over to the martial tribunal—was altogether unlawful and unjustifiable.” (Ibid.)

This is what the Lord Chief Justice appears to have been anxious afterwards to repeat, as if it were a proposition of law! It is for the reader to judge whether it was not wholly extra-judicial, and, being extremely prejudicial to an absent man, “altogether unlawful and unjustifiable.” But, at all events, it was not a proposition of law. It was a mere expression of opinion on a mixed proposition of law and fact, which was for the jury, if it had been relevant. But it was, as the Lord Chief Justice went on to show, quite irrelevant. For, he said:—

“It does not affect the question we are now considering, viz., whether, having been brought within the ambit of the martial law, he was *liable to be tried under it.* I cannot but think he was.” (Ibid., p. 119.)

So that, if the strong expression of opinion had been on matter of law, it was entirely irrelevant, and so quite extra-judicial. But it will be manifest it was entirely a matter of fact, for it went upon *the suggested conspiracy*

to condemn the man without evidence, which was assuredly a question of fact, had it been relevant, and had there been any foundation for it. But the Lord Chief Justice himself said it was irrelevant, and showed it was unfounded. For he had said:—

“It was *believed by the authorities* that Mr. Gordon had been the instigator of the rebellion, and an accomplice with those who were actually engaged in it. It was therefore *thought right and necessary* to make him answerable for the offences of which it was believed he had been guilty.” (Ibid., p. 7.)

It must be manifest that, whether or not they were strictly and legally justifiable, they were *morally* justifiable, and not culpable at all, seeing that they had an honest belief that it was just and necessary, and, as has been seen, had abundant ground for that belief, so that it was reasonable, as well as honest. Whether or not they *were* strictly and legally justifiable was a question of *law* for the Lord Chief Justice, and to direct the jury on *that* was within his proper province and duty; but he did not do so, and avowed that his mind was in doubt, and left it to *them* to determine. That is, he abandoned his own proper province and duty to the jury, and, at the same time, he usurped *theirs*; for he assumed to tell them that Gordon's removal, in his opinion, was unjustifiable—a proposition of *fact*, depending on all the circumstances as to necessity, honest belief in it, reasonable grounds for it, and the like; and accordingly the Lord Chief Justice actually based his opinion upon the point on the assumption of improper motive! What could be more manifestly and flagrantly beyond the proper province of a judge than the expression of opinion, on a matter of fact, against the accused, based upon the suggestion of bad motive—a suggestion contrary to the only evidence before him, and entirely irrelevant? What could be more flagrantly extra-judicial—more utterly “unwarrantable and unjustifiable”? Yet this, as it afterwards

appeared, was the part of his charge upon which the Lord Chief Justice set most store, and to which he was most anxious to adhere! What could more strongly show that his charge had been delivered under the influence of some strong prejudices against Mr. Eyre, derived from the discussions which had taken place, or of some fatal misconceptions both as to the facts and the law!

The presence of some unusual influence on the mind of the Lord Chief Justice was made manifest by his extra-judicial and irrelevant observations, adverse to the accused, upon irrelevant questions of fact—for instance, as to the suppression of the rebellion, which was the case for the prosecution. They gave, however, no evidence upon it, except as to disturbances in the place which was the scene of the original outbreak. And it was not for the Lord Chief Justice to assume it in their favour and against the authorities, especially as it was quite irrelevant to the case before him. For he said :—

“I do not think that it is for this Court, with reference to this particular trial, *which took place shortly after martial law was declared*, to enter into the question whether that law was kept up longer than it needed to have been.” (Charge, p. 159.)

So that, after all, it was entirely irrelevant, and the observations of the Lord Chief Justice, like all his other observations on the facts, were entirely extra-judicial. Added to which, this last observation is not very consistent with his former observations in the earlier part of the charge :—

“The *moment* the soldiers appeared in the field the whole insurrection collapsed.”

For Gordon's execution was on the 23rd October, ten days after martial law had been declared. Yet in the passage just before quoted the Lord Chief Justice says :—

“The particular trial took place shortly after martial law was declared, and that therefore *it was not necessary to enter into the question whether martial law was kept up longer than it needed to have been.*”

Yet the Lord Chief Justice went on to say :—

“To some it has seemed that, when it is borne in mind that the insurrection was *crushed in a moment*, and that as soon as the soldiers made their appearance the black men fled, and the only business of the soldiers was to pursue and hunt them up and bring them in as rebels before the martial tribunals, this *prolonged* martial law and this fearful amount of executions, are things which have brought reproach upon the name of Englishmen.”

To some it has seemed that these extra-judicial observations, prejudicial to the accused, brought scandal upon justice. It is true that the Lord Chief Justice does not *in terms* express this view as his own. “To *some* it has appeared;” but he significantly suggests that it is his own, for he suggests as the opposite view one which no one would adopt :—

“Others have thought that as this insurrection, if it had been permitted to run its course, and had not been crushed in the outset, might have been attended with consequences of the most fearful character, anything that could be done for its suppression and extinction—any means, no matter what, no matter how extraordinary, how contrary to every principle of law—were justified in order to achieve so desirable an end.”

No one had thought this, nor had ever suggested this, or anything like this; it was a mere creation of the vivid imagination or rhetorical style of the Lord Chief Justice. What *had* been thought and suggested was, that such deterrent measures as were fully in *accordance* with the principles of law, and consisted merely in a more prompt and summary application of those principles to a case of pressing danger and extraordinary peril, were justifiable on such an occasion; that is, in a word, in a case in which some thousands of men, armed, drilled, and embodied, had risen in rebellion, and commenced what was intended to be a wholesale massacre of the English population.

The presence of the most fatal misconceptions as to the facts and the law was manifest throughout. And it is most important to observe that, according to the view

of the Lord Chief Justice, Mr. Eyre was, so far as concerns Gordon's case, condemned only upon the assumption of the most monstrous and most mischievous fallacy—a fallacy which has been repeatedly pointed out as pervading the whole of his charge—viz., that a man may excite an insurrection by language naturally calculated to produce it, and yet not be criminally responsible for it. Once more, the author protests against this, not only as not being law, but as being a most monstrous and most mischievous *perversion* of the law. The law of England, he again declares, holds that, if a man has excited an insurrection, by language naturally calculated to excite it, he is criminally liable for it, and that to talk of his actual intention is idle, seeing that the law, in accordance with common sense, holds that he must be taken to have intended what he must have foreseen was likely to follow, and that, in short, he must be taken to have *meant* what he *said* and *intended* what he *did*. The notion which pervades the charge of the Lord Chief Justice, that a man may *innocently and unintentionally excite an insurrection*, just as if it were a mere accidental, casual kind of thing, will appear, when it is looked at, inconceivably absurd. It cannot possibly be done accidentally, or casually, or unintentionally. It requires a long persistence in exciting influence, or an adroit and artful use of inflammatory language, *tending* to excite the popular mind, all which necessarily implies design. Of all the monstrous and mischievous *notions* ever broached, perhaps this—that a man *may excite an insurrection without meaning it*—is undoubtedly the worst. It goes to the very root of criminal responsibility for sedition and treason! It strikes at the safety of the community. It leaves them entirely at the mercy of the unscrupulous demagogue, who may for months keep a whole population designedly in a state bordering upon outbreak, as the Lord Chief Justice says Gordon did,

and then, when the outbreak takes place, as it infallibly must some day, it allows the arch agitator, the cause of all the horrible massacre and disaster that may ensue, to look on calmly and unconcernedly, and content himself with saying, as Gordon did, that it was "unadvisable," and that he had never told them to do these things. Let it be borne in mind, that it was upon this gross perversion of English law, Mr. Eyre, so far as Gordon's case is concerned, was condemned !

On a charge, the substance of which was inciting the blacks to murder the whites, the Lord Chief Justice said it "was *little or nothing*" to prove that the accused had said to the actual leaders in the massacre that if the blacks did not get the back lands the whites would "be die," the obvious meaning of which was, interpreting the negro gibberish, should be all killed. After this no one will be surprised to find that the Lord Chief Justice should think nothing of an allusion to Hayti. Referring to a speech of Gordon's, in which he was sworn to have told the blacks "*to do as they did in Hayti*" (i.e., massacre all the whites), the Lord Chief Justice said :—

"It is absurd to give to such language the colour and complexion of treason. To be sure, the deposition makes Gordon say, 'You must do what Hayti does.' But to say nothing of the evidence having being wholly inadmissible, who could believe that by these words Gordon meant to excite his hearers to treason and rebellion ?

"If the man had said, 'One of these days, if oppression is carried to the utmost, *it may be a question whether you may not have to do as they did at Hayti*,' such an expression would have been a *very injudicious and very improper observation* to have made, yet it would *obviously not have intended to provoke insurrection*" (177).

So that, according to the Lord Chief Justice of England, to suggest significantly but artfully to an excitable black population, within a day's sail of Hayti, that, if the whites don't do as they wish, it "may be a question whether they may not have to do as they did in Hayti"—i.e., massacre the whole white population—would, indeed,

be very *injudicious*, and even improper ; but, so far from its indicating any intention to provoke to insurrection, it would obviously not have been intended to do so ! This may, indeed, explain the view taken by the Lord Chief Justice of the case, *but it is not the view taken by the English law*, which is, that a man *must be taken to have intended the natural and probable results of his words or acts*.

This sort of language might have been harmless or senseless in this country, but in a negro colony like Jamaica, with half a million of blacks, within a day's sail of Hayti, it had a terrible, a murderous significance, and meant a negro insurrection. Ignoring all this, the Lord Chief Justice insisted on the notion that martial law is only allowable as against prisoners taken *after battle*, according to which it is manifest that martial law would never practically be available for the suppression of the most formidable of all possible rebellions, a negro insurrection, in a colony where the preponderance of the negroes is overwhelming. The Lord Chief Justice, however, did not realise the danger, and so did not appreciate the necessity for martial law. Here, indeed, was the fallacy which pervaded the charge of the Lord Chief Justice, that he insisted on looking at the case entirely through the light of English experience and English notions and ideas. It may be said his view of the facts was Mr. Buxton's, and his notion of the law that of Mr. Mill. That is to say, his view of the case was that an outbreak meant no more in Jamaica than in England, and involved no greater danger, and so no more necessity for the exercise of martial law ; and his notion of the law was that martial law is restricted in Jamaica, as in England, to the suppression of the mere outbreak, or of *actual* insurrection ; whereas the view of Mr. Eyre, and, to a great extent, that of the Royal Commissioners and the Secretary of State was, that the outbreak in Jamaica was the outbreak of a *rebellion*

so formidable that it required measures of severe repression to keep it down until the arrival and distribution of ample reinforcements to ensure the *presence* of troops in every part of that immense colony ; and his view of the law was that the very object of the Colonial Act was to allow of the exercise of martial law as long as there was *apprehension* of rebellion, an enactment to which the Lord Chief Justice never once adverted, and the *contrary* of which, that the exercise of martial law was limited to *actual* rebellion, was assumed by him throughout. It must be obvious, therefore, that the strictures of the Lord Chief Justice upon the course which was pursued, were not only extra-judicial, but were entirely irrelevant and inapplicable to the real state of the case, whether as to the facts or as to the law, and were made with reference to an assumed or imagined state of the facts and of the law, which were the very opposite of what really existed. This arose from the mind of the Lord Chief Justice being pervaded by the fallacy of supposing that Jamaica was like England, whether in *fact* or in *law*. Because no amount of agitation or seditious incitements are likely in this country to cause wholesale massacre, and there is no class in this country so numerous as regards the other, that, even such a disposition, if it existed, could cause anything approaching to an overwhelming danger and appalling peril, he could not realise its existence in Jamaica.

With these notions of the law, and these impressions as to the legal and social identity between this negro colony and the mother country, the Lord Chief Justice of course considered the evidence insufficient. Considering it as strictly as if it were a trial for treason in this country, and under the influence of the same fatal misconception, having declared the evidence insufficient, he proceeded to denounce the conviction in terms of the most cruel severity ; and with still greater injustice, and in the face of the evidence before him, denounced the authorities

for the *removal*, as if it had been designed in order to secure a conviction on insufficient evidence.

"To Mr. Gordon it made the difference of life and death, because if the man had been tried upon that evidence—but *could not* have been tried upon that evidence—no competent judge, acquainted with the duties of his office, could have received that evidence. Three-fourths of the evidence upon which that man was convicted and sentenced to death was evidence which, according to no known rules, not only of ordinary law, but in martial law, according to the rules of right or justice, could possibly have been received, and it never would have been admitted, if a competent judge had presided, or if there had been the advantage of a military officer of any experience in the conduct of courts-martial, who knew by what rules a tribunal decision of doing justice ought to be governed in the reception of evidence against the accused" (p. 115).

All this injustice arose from an entire misconception as to the nature of the *charge*, and from ignoring an elementary principle of criminal law. The substance of the charge was proved beyond a doubt; proved clearly and conclusively; proved, as stated by the Commission; *proved*, as admitted by the Lord Chief Justice himself; for it was, as the counsel for the prosecution stated, inciting to insurrection. And if the Lord Chief Justice had only been as candid in his tone as the counsel for the prosecution, he never could have permitted himself to make these cruel and painful imputations. For no one would for a moment imagine that, *unless* under the influence of some fatal prejudice or unfortunate misconception, he ever would do injustice to any one. Imagining, as he did, the charge quite different from what it was, as requiring *express proof*, which was not afforded, his indignation was natural enough. But then, through misconception, his indignation was misdirected and unjust; and it is a remarkable illustration of the wisdom of a candid and charitable judgment of men's actions on an occasion of emergency, that here was the Lord Chief Justice of England, after a year and a half for reflection and research, delivering an elaborate oration; analysing with merciless severity the pro-

ceedings of officers sitting on courts-martial, under martial law, amidst all the excitement of a terrible emergency; denouncing them, and holding them up to reprobation in the most unmeasured terms; casting upon them the most cruel imputations; and doing all this in entire error upon every important point involved, and under the influence of the most manifest misconception, and of fatal prejudice, naturally arising therefrom.

Under the influence of these fatal misconceptions, under an erroneous notion of the law, the Lord Chief Justice applied with rigorous severity to the proceedings of a court-martial, under martial law, the strict rules of legal evidence which, as has been held, are not obligatory even upon regular courts-martial. And worse than this, he *applied them wrongly*. Thus, for instance, the President of the court-martial having called for the deposition of a witness, and had it read, evidently to check, explain, or confirm his oral evidence, the Lord Chief Justice most vehemently denounced this as a "most lamentable departure from the first principles of procedure," because the deposition had not been taken in the presence of the prisoner; a very natural, though not fatal objection, *if the witness is not called, but of no manner of importance if he is*. And accordingly, a short time before these events, Parliament had passed an Act expressly to allow of it, and providing as to any statement of a witness:—

"A witness may be cross-examined as to previous statements made by him in writing, or *reduced into writing*, relative to the subject matter of the indictment. . . . And it shall be competent for the judge at any time during the trial to require the production of the writing for his inspection, and he may therefore make such use of it for the purposes of the trial as he may think fit." (27 & 28 Vict. c. 18, the Act known as Mr. Denman's, for Amending the Law of Evidence and the Practice in Criminal Trials, passed May, 1865.)

And then the Lord Chief Justice, in his passionate denunciations of Gordon's trial, declares that which

Parliament had just provided for, "a most lamentable departure from the first principles of procedure!" (Charge, p. 132.) Nor is this all, for one of the objections most vehemently urged by the Lord Chief Justice is, that two of the witnesses were rebels liable to be tried:—

"Now, if ever there was a violation of the sound rules of evidence, it was the admission of these two documents (and the putting them in appears to have been the act of the president), the evidence having been given behind the back of the accused, and the witness having been already examined; *and what makes the matter worse is, that they were depositions made by men who may well have thought that by making these statements they would be insuring their own safety*, they being known rebels. To use these depositions was one of the most lamentable departures from every principle of procedure that can well be imagined." (Charge, p. 132.)

Now would it ever be supposed that the Lord Chief Justice himself had shortly before declared this very objection one utterly unsubstantial? Yet that is the undoubted fact. For not long before, the case of Winsor had occurred, who being indicted for murder with one Harris, and both having been put upon their trial, the latter was admitted evidence against the former, without being either acquitted or convicted, or in any way discharged from the accusation, so that she would have a manifest interest in swearing the guilt on her fellow-prisoner Winsor, which she did, and Winsor was accordingly, mainly on that evidence, convicted, and sentenced to be hanged. The admission of the evidence of the fellow-prisoner was undoubtedly irregular and improper, and contrary to all practice; but still the criminal law of England allowed no writ of error for the improper reception of evidence (so the Judges held), and the matter being then referred to them by the Secretary of State, on the broader considerations of humanity and justice, they all concurred in a declaration that there was no reason for not carrying out the sentence, as there did not appear to have been any substantial injustice. And the first name signed to that

was the name of the Lord Chief Justice himself, who now denounced a court-martial under martial law, because it had admitted similar evidence! What can more conclusively show the presence of some prejudice arising out of unfortunate misconception! Nor is this all. The reason why the Judges, headed by the Lord Chief Justice, held that there was no substantial injustice, was that *there was other evidence* strictly regular, tending to show that the irregular evidence was true. So it was in Gordon's case. There was strictly legal evidence that Gordon had been heard to incite the insurgents to massacre. He was heard to say to the chief, "That if the whites did not give up the back lands they must all die;" and there was a placard issued by him, telling the blacks to be "up and doing," and the Lord Chief Justice in the face of this told the grand jury:—

"A man has been condemned, sentenced, and executed upon evidence which would not have been admitted before any properly constituted tribunal, and upon evidence which, if admitted, fell altogether short of establishing the crime with which he was charged" (p. 153).

That is the *formal* charge, as distinct from its *real substance*, the substantial matter of fact charged, that he had incited to the insurrection. That this charge was proved beyond a doubt was established by the Report of the Commissioners, and the Lord Chief Justice in substance admitted it, and he could only evade its effect by applying the strict rules of the law of treason, and having recourse to his pernicious doctrine about intention, that a man may incite to and raise an insurrection without intending it. The authorities, however, as he admits, honestly, and we should say, reasonably, took a different view of the law, and thought the execution just and necessary.

It is true the Lord Chief Justice expressed an opinion that the execution was not necessary, but this without noticing the grounds upon which it had been deemed necessary. And above all, he did this without noticing

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the evidence of the necessity for making a prompt example of the man ; though he himself had said that the authorities *believed* in this necessity. He never noticed the Commander-in-chief's opinion that the circumstances of the colony called for his prompt execution. He never noticed what those circumstances were. He did indeed, casually elsewhere, drop the admission that "the trial took place shortly after martial law was declared," but he failed to notice the then circumstances of the colony, the actual leaders of the insurgents at large, rousing them to revolt, and the insurgents actually meeting the Queen's troops in the field on the very day of the trial. Not only did he fail to notice these facts, but he conveyed to the jury an impression entirely opposite to that which these facts, had he stated them, would have conveyed ; for he spoke of the insurrection as put down immediately, as crushed in a moment, and so forth. If it were an excuse for his not mentioning the facts referred to, that they were not in the evidence before him, that would only show the injustice of the prosecution and the miserably narrow basis on which they were rested ; and it would be no excuse for his stating to the grand jury as facts the *contrary* of the undoubted facts of the case ; for these facts had been officially reported by a Royal Commission, and were now undoubted facts of a public nature, facts of history to which, on a criminal charge, and in *favour* of the accused, the judge might, it is conceived, well and properly advert ; but, at all events, to state as facts the *contrary* of these undoubted facts, and then to press passionately against the accused a view of the case founded upon the facts thus assumed against them, in the face of these public, these authentic, these undoubted facts, this was surely a violation of justice happily without parallel in the modern history of the country.

But so it has been throughout in the history of this unfortunate case. Mr. Eyre has been condemned upon a *one-sided view of the case*, and upon erroneous notions both as

to the facts and as to the law. All the facts which might appear to make against him have been put forward prominently, and pressed passionately, while those which made out his justification have been kept in the background, and sedulously suppressed. If in a certain sense this is inseparable from criminal proceedings, it only shows how unfair and unjust they must necessarily be in such a case.

That the Lord Chief Justice had considered the subject under the influence of very strong feelings of prejudice, and that not so much against martial law in general (for he had heartily approved of it in the case of Ceylon), but on account of his impression as to its application and exercise in the particular case of a negro insurrection, is manifest from the very circumstance that he entered so unusually into the facts in a spirit so adverse to the authorities, and it is manifest from this further fact that not content with having *delivered* such a charge, he *published* it! *Published* it with all its cruel and extra-judicial imputations, and uncharitable suggestions, published it to the world, although it was known that criminal proceedings were in contemplation against the Governor; and the whole tone and tendency of the charge were so exceedingly calculated to prejudice him. The Lord Chief Justice nevertheless *published* a charge so prejudicial to him, and not content even with this, he appended to it an elaborate note, entering still more largely into the facts, in a spirit still more hostile to him, and in a tone still more calculated to prejudice him, and it is worth while to examine the note in order to estimate the grounds on which these prejudices rested. The note commenced thus:—

“The grand jury having, in ignoring the indictment, made a formal presentment recommending that martial law should be more clearly defined, by legislative enactment, I am reluctant to take leave of the subject without adding the expression of my opinion to that of the grand jury, that the subject of martial law should be settled by legislative interposition, or without also protesting, as far as in me lies, and with whatever weight and authority belong to the office I have the honour to hold,

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against the exercise of martial law in the form in which it has lately been put in force."

But upon this, waiving the question of the propriety of a judge publishing, with all the weight and authority which belong to his office, strong expressions of opinion against a person exposed to criminal prosecution in respect of the matters involved, waiving this, it is obvious that the expression of opinion involves an entire exculpation of Mr. Eyre and the authorities. For it would naturally recur to any one after hearing the Lord Chief Justice, and it had evidently recurred to the grand jury, that if this was the state of the law, that is, either if martial law was absolute, irregular, military rule, or if it was wholly doubtful what it was, *no serious blame could be ascribed to the authorities, who, upon a great emergency, were called upon suddenly to put it in operation.* And this, no doubt, was one of the main reasons why they ignored the bill. But further, it is obvious that whatever martial law might be taken to mean, the only intelligible rule as to its exercise, and the only reasonable test as to excess, *must be that offered by martial law itself.* As already seen, the Lord Chief Justice professed to be in an uncertainty what it meant, but argued that it meant regular military law (being under the mistaken impression that this would condense the proceedings, whereas, on the contrary, it has been seen that most of the proceedings, after the first hot rage of pursuit, were in accordance with regular military law), and at all events it is obvious that it must mean some sort of rule, some kind of military law. It would not make much practical difference whether martial law were taken to mean regular or irregular military law, since both would condemn the first hasty excesses, and either would justify what afterwards took place, *i.e.*, the great bulk of the executions. But in whatever sense martial law is to be taken, it is manifest that the only rule as to its exercise, and the only test as to excess, must be found in

martial law itself. Now this was altogether lost sight of, and the Lord Chief Justice went on to express his opinion extra-judicially against the exercise of martial law "in the form in which it has lately been put in force," without reference to any other test than his own mere opinion upon the facts. He said :—

"I am quite ready to admit that if martial law can be lawfully put in force at all, the circumstances attending the recent outbreak were such as at the first onset to warrant its application; and even though the insurrection was at once put down, it might be *well to have the means of summary and immediate punishment at hand, hanging as it were over the heads of the population to strike terror into their minds in the event of any further disposition to disorder so manifesting itself.*"

So that the Lord Chief Justice admitted the lawfulness of summary executions as a means of striking terror among those disposed to rise in rebellion, and deter them from so doing, which was exactly what Mr. Eyre had supposed martial law meant. And the sole question would be how far this was necessary. And though the Lord Chief Justice arrived at a conclusion adverse to the authorities upon that point, it was only by entirely ignoring all the grounds upon which they had formed their judgment, and by taking an entirely one-sided view of the facts, and by falling into the flagrant fallacy of confounding the *outbreak* of the rebellion with the rebellion. It is obvious that, throughout, the Lord Chief Justice was thinking of the mere outbreak, and of actual insurrection, and that his view of the case rested on the narrow ground on which it had been put by the prosecution, viz., that at the particular place where the outbreak occurred no further disturbances had broken out. The Lord Chief Justice was quite incorrect as to the facts. He wrote :—

"It might be well to have the means of summary and immediate punishment at hand, hanging as it were over the heads of the population, to strike terror into their minds, *in the event of any further disposition to disorder manifesting itself. But nothing of the sort did manifest itself.*"

No doubt, not at Morant Bay, the scene of the original outbreak. But *ten days after the outbreak the insurgents met the troops in the field, and came into conflict with them :—*

“The mere presence of a handful of soldiers sufficed to put an end to what appeared at the outset likely to prove a formidable insurrection, but which in the result turned out to be of a totally different character.”

No doubt the “mere presence of a handful of soldiers” sufficed to put down the actual insurrection, and the mere presence of a handful of soldiers, *wherever it could be obtained*, would suffice to keep down rebellion from breaking out into insurrection. So Mr. Eyre said; but then, *until* the reinforcements arrived, and *were distributed*, he could not obtain the “presence of a handful of soldiers,” except in two or three places; and in the meanwhile there were thousands of the insurgents at large amidst a sympathising population of the same race, trying, it might fairly be presumed (and as was indeed proved) to arouse them into a renewal of insurrection, an insurrection not by means of regular encounter of troops, or armed men in the field, but as the recent events showed, by means of sudden surprise and massacre. The danger was one which from its nature could not be realised by actual facts until it was too late to grapple with it, for if the vast black population had once really risen, or had been allowed, as the Commissioners said, to acquire more than a momentary ascendancy, the ruin of the colony must have ensued. And the object was to *prevent* them from rising, and to do this by means of a handful of soldiers, whose presence could not be obtained everywhere, and the smallness of whose numbers left the greater part of the colony absolutely defenceless. In this state of things the view of the authorities was not merely, as of the Lord Chief Justice, that—

“It might be well to have the means of summary and immediate punishment at hand, hanging as it were over the heads of the population,



to strike terror into their minds, *in the event* of any further disposition to disorder manifesting itself."

but they thought it well to *inflict* such punishments, in order to *prevent*, by means of the terror thus inspired, any further outrages.

The difference between their view and that of the Lord Chief Justice was simply this, that he thought it necessary to *await* further massacres. They thought it better to *prevent* any further massacres. It appeared to them that there had been evidence enough of the disposition of the population to rebellion. In his view, however, the danger did not mean rebellion, but only actual insurrection. Thus it is manifest that the opinion of the Lord Chief Justice was pervaded by a view quite at variance with that of the Commissioners and the law advisers of the Crown, viz., that the scope of martial law is not rebellion, but only actual insurrection. In either view it is obvious that his opinion is entirely at variance with theirs, for they were of opinion that martial law was properly maintained in full force up to the end of the month, that is, for more than two weeks, whereas the Lord Chief Justice would not have allowed it at all, or at all events not more than *a day or two*. For he says:—

"Practically the rebellion was over *within twenty-four hours after martial law was proclaimed*; and from Colonel Nelson's despatch of the 21st October, when he says that the next day after Mr. Gordon's trial being Sunday, and there existing no military reason why the sentence should not be deferred, he had delayed its execution till the Monday, it appeared that all apprehension of further disturbance in the district in which the insurrection first broke out was at an end by the 21st, the date of Mr. Gordon's trial" (p. 162).

It is obvious that the Lord Chief Justice here had in his mind actual insurrection, *i.e.*, the original outbreak, and he had adopted the suggestion of the counsel for the prosecution that this letter showed there was no immediate necessity for the execution, since it could be deferred till Monday, and there was no further disturbance at *Morant*

Bay, the scene of the original outbreak. But he surely must have known that the necessity for it was never put upon that narrow ground of a *present* local necessity, but of a necessity with reference to the *general* state of the district, and indeed of the colony. He might have referred to the letter of Mr. Eyre, which put it upon that ground, and the letter of the Commander-in-chief, in which he stated that—

“After carefully considering the proceedings and sentence, I was of opinion that the position in which the Governor was placed, and the *then state of the colony, called for powerful and immediate action.*” (Minutes of Evidence, p. 628.)

The Lord Chief Justice, moreover, had forgotten that on the 21st the insurgents met the troops in the field, and that the danger to be guarded against was not armed encounter in the field, but sudden massacre by overwhelming numbers, upon small defenceless parties of Englishmen in remote districts, where there were no troops at hand. Such massacres could not be, *and were not prevented by the mere presence* of troops, but by the terror inspired by the military executions. The Lord Chief Justice had evidently also forgotten that at the time of the execution the active leaders of the insurgents were at large, vehemently urging them to continue what they called the war. He says :—

“It appears that all apprehension of further disturbance in the district where the insurrection first broke out was at an end by the 21st, the date of Gordon’s trial. Fears were entertained of outbreaks in other parts of the island, and communications to that effect were made to the Governor ; but those fears proved unfounded. No further insurrection, no further disturbance took place, there was no rebellion going on, for the suppression of which martial law was necessary : yet martial law went on in its sanguinary work” (p. 162).

Here it is obvious the Lord Chief Justice regarded rebellion merely as actual insurrection and open disturbance, and assumes that as there had been no further actual insurrection at the place where it broke out, therefore the

rebellion was at an end. But in the first place the Lord Chief Justice in the above passage uses the word "district" in a very vague and equivocal way, and the statement is only correct if limited to the *particular place* and its more immediate neighbourhood; for the authorities could not on any given day know what was going on all over the *declared district*, a district of vast extent, covering hundreds of square miles. And in point of fact, as it turned out, the *insurgents on that day met the troops in the field*. And next, why was it that in the *particular place* all apprehension of further disturbance was at an end? It was because, as appeared on the evidence (*which he never adverted to*) the place *was occupied by the troops*, and of course the rebels had gone elsewhere. Some thousands of them, the Commissioners stated, had been engaged in the massacres and outrages which took place during the first four days. Where were they? They had left the place when the massacre commenced. But they were still in existence, and wherever they were, it might well be presumed ready, if they could only make up their minds to do so, to *renew* the insurrection. The object was to *prevent* this; and although at the *particular place* all apprehension of further disturbance was at an end, it was far from being so elsewhere. The Lord Chief Justice admits this:—

"Fears were entertained of outbreaks in other parts of the island; but those fears proved unfounded; no further insurrection, no further disturbance took place."

The Lord Chief Justice, as already shown, was entirely incorrect. The most audacious act of rebellion that occurred all through, took place at that very time. The insurgents met the troops in the field. That was actual insurrection. But the rebellion was not at an end the moment that actual insurrection ceased, as the Lord Chief Justice assumes:—

"There was no rebellion going on for the suppression of which martial law was necessary, yet martial law went on in its sanguinary work."

It did not occur to the mind of the Lord Chief Justice as it had occurred to the more candid and considerate minds of the Commissioners and the Secretary of State, that it often happens that the very success of the measures taken removes the evidence of the necessity for them. The remark had been made long before by one of the most dispassionate of our judges, the late Mr. Justice Patteson. But it did not occur to the mind of the Lord Chief Justice. So he put it as a proof that martial law was not necessary, that the exercise of martial law was successful. It did not occur to him that martial law had been going on from the first, and that therefore it was impossible to show that *without* the exercise of martial law there *would* have been no further insurrection. What was it that prevented it? It could not have been the want of *disposition* among the population, that had been abundantly shown. And thousands of the insurgents were at large. It could not have been the presence of the troops, for they were *not* present, except in a very few places, by reason of the smallness of their numbers.

According to the report of the Commissioners the number of the actual insurgents, most of whom were at large, was so great that if they should have risen again, before the reinforcements arrived, the handful of troops must soon have been annihilated, or worn out and exhausted. And the rebellion had spread rapidly among the black population, among whom the whites were everywhere scattered, in the proportion of about one white among thirty or forty blacks; that there was great reason to fear, until the reinforcements were distributed, that the blacks might, without rising in a body or attacking the troops at all, simply rise again and overwhelm the whites scattered and isolated among them. That was the real danger, and the Lord Chief Justice entirely overlooked it. Yet he had in his charge stated the elements of the danger:—

"Looking to the circumstances in which the white population and the authorities of the country were placed, with reference to the proportion, the small proportion, which the white population bore to the black, to the mere handful of military force there was, and to the consequences—too horrible to think of—which might have ensued if the insurrection had not been suppressed; to the threat, by the insurgents, of destroying the white men, and their reported intentions as to the white women, I think that if ever there were circumstances which, if it be lawful to put martial law in force, called for the application of it, it was this case of martial law in Jamaica" (p. 159).

But the Lord Chief Justice afterwards entirely forgot that all the elements of danger continued to exist: the disposition of the blacks, and their enormous preponderance of numbers; their irresistible power over the few whites scattered among them, until the actual presence of troops should exercise a deterrent and protective influence; and he forgot, as the Secretary of State had forgotten, that this presence could not be secured until the reinforcements had not only arrived but had been distributed, which was not accomplished until the eve of the expiration of martial law. The Lord Chief Justice fell into a twofold error. He forgot that, by reason of the peculiar and exceptional circumstances of the colony, and the terrible fact of a negro rebellion there, the Colonial Act allowed of martial law so long as danger continued, and he altogether mistook the nature of the danger, and so failed to observe that it had nothing to do with resistance of the troops, or assembling of large bodies of men in armed and open rebellion. The danger was quite different; it was a danger of sudden surprise and massacre of the whites all over the colony. And it would not do to wait till the danger was actually realised in fact. The Lord Chief Justice admitted the efficacy and legality of executions of rebels as a means of deterring others; but he wanted to *wait for more massacres*. The authorities, however, thought that there had been massacres enough already, and that the object should be to prevent further massacres, and that the best way of

doing this was to execute a great many of those who had been engaged in the rebellion, in order to deter the others from rising. In this view they had the authority of the Lord Chief Justice himself, who, in a case in which not a single life had been taken by the insurgents—in the case of a mere political rising, which really was put down in a day by the slaughter of some hundreds of them in a mob—deliberately laid it down as Attorney-General that it was quite right to go on for months executing insurgents by martial law, *in order to deter others* :—

“We are told of the excessive rigour of the punishments ; and I admit it, if the amount of punishment is looked at only with reference to the particular rebellion. But in considering the question of punishment it was necessary that the Governor should look at all the surrounding circumstances of the case. We do not punish men simply for the offences they have committed, *we punish them in order to deter others from following their example*. It is all very well to speak of a rebellion suppressed without difficulty, but let us recollect the spirit of the people, their disaffection to the Government, and all the circumstances connected with the native population.” (Sir A. Cockburn, when Attorney-General, on the Ceylon case. Debate in the House of Commons, Hansard’s Debates, vol. 115, p. 22.)

Precisely so. That was what Mr. Eyre had to consider : “the spirit of the people, their disaffection to the Government, and all the circumstances connected with the negro population.” And those circumstances were that they were 450,000 ; that thousands of them had just risen in order to massacre the whites ; that the rebellion had spread (as the Commissioners stated) “with singular rapidity over a vast tract of country.” And how could he doubt that as they had that disposition yesterday, they had it to-day ? Or how could he suppose the danger was over simply because, under the influence of the terror inspired by martial law, massacre had been stopped ? How could he suppose that if the pressure of that terror was removed, the enormous power of the blacks would not urge them to rise upon the few whites everywhere scattered among them, and thus carry out the murderous design ?

That was the danger Mr. Eyre had to encounter, and he dealt with it exactly in the way which the Lord Chief Justice had declared to be right in the case of Ceylon. He executed a great many of the guilty in order to deter others. It would be vain, and worse than vain, to say that the numbers so executed were greater than in the case of Ceylon; for, in the first place, taking the *whole* number of those slain in both cases, the number was *not* much greater; and next, assuming that it was so, the *danger* was so infinitely more formidable that no comparison in that respect can be instituted between the cases; and, lastly, if the number of men convicted by *court-martial* was far greater than in Ceylon, it was because the number of those found to be deserving of death was so much greater in the one case than in the other, there being hardly any at all deserving of death in the Ceylon case; whereas, according to the report of the Commissioners, in the Jamaica case there were thousands. If it was right, as the Lord Chief Justice said in the Ceylon case, to execute the guilty in order to deter others, how could Mr. Eyre help that there were so many more found to be deserving of death in Jamaica than in Ceylon? Assuming that the men were fairly tried and justly sentenced, the numbers sentenced showed the numbers guilty, and, therefore, only showed how formidable the rebellion was. Hence, in looking at the numbers *executed*, it would be essential to have regard to the manner in which they were tried, and to see if they were justly *convicted*. This had, of course, occurred to the *Commissioners*, and hence they entered carefully into the question, and arrived at the conclusion that, *in the great majority of cases*, the findings were fully justified by the evidence. Then it followed that the men were, for the most part, justly executed; and, according to the opinion of the Lord Chief Justice in the Ceylon case, they might properly be executed to deter others. If he had altered his opinion, how was Mr. Eyre to be aware of

that? And what fault can with common decency be ascribed to him for having followed the opinion of the Lord Chief Justice when Attorney-General? And with what pretence of fairness could the Lord Chief Justice hold him up to obloquy for having so acted on his own opinion? "Nearly a thousand persons charged suffered either death or torture!" an inflammatory way of putting it, reminding us of Mr. Buxton. It was a way of representing the case rather popular than judicial, to represent that all who were flogged were tortured. This single sentence is significant of the spirit in which the Lord Chief Justice had spoken and written. But as to the more important matter—the infliction of death—he thus stated the executions, without adverting to the question of their justice :—

"It appears from the Report of the Royal Commissioners that 439 persons were put to death ; 354 by sentences of court-martial ; 85 (most of them wantonly and unnecessarily) in the pursuit."

But the Lord Chief Justice does not add, as he ought to have added, that of these latter, most of them—that is, *all* of those who were killed wantonly—were killed by soldiers—*black* soldiers—in the absence of their officers, and without orders ; and the remainder of those killed in the pursuit, were killed during the first few days, amidst the first feelings of horror and rage inspired by the massacre. And that, as to the trials by court-martial, the Commissioners reported that, in the great majority of cases, the evidence was sufficient and satisfactory, and that out of 354 cases they can only specify four cases in which the evidence was insufficient. Surely the Lord Chief Justice, before he gave the weight and authority which belong to his office to such an injurious representation, should have read the very document he refers to, and have given *both sides of the account*. Had he done so, it would have appeared that Mr. Eyre had only followed out his own

opinion, and had allowed the guilty to be executed in order to deter others. No wonder that the Lord Chief Justice *did not remember Ceylon*. He thus, in most inflammatory terms, describes and deplores the instances of martial law which had occurred :—

“Thrice in little more than half a century ; to say nothing of the horrors perpetrated in putting down the insurrection in Jamaica in 1760—in Ireland, in Demerara, in Jamaica, has martial law been carried into execution under circumstances of the most painful character.”

“In Ireland,” more than half a century ago ; in Demerara, forty years ago—omitting the case of Ceylon, which occurred only fifteen years ago, and in which he himself *defended* the exercise of martial law, under circumstances of the most painful character ! How singular the omission ! How *significant* ! Significant of a secret sense or consciousness of the enormous injustice of holding up Mr. Eyre to obloquy for doing what he had declared to be right—executing the guilty to deter others. It is hard to say which was most remarkable, the sensibility of the Lord Chief Justice as to Jamaica, or his apathy or obliviousness as to Ceylon ! He must needs go back more than a century to slake and satisfy his sensitive sympathy with the negro in Jamaica ; but he had forgotten what happened to the unhappy Cingalese only fifteen years before, although he himself had vindicated it, on the plea that it was necessary to execute men, even after a rebellion was over, in order to deter others :—

“A man must be dead to all sentiments of humanity who can read the history of the Irish rebellion at the close of the last century, or the account of the executions and scourgings after the recent outbreak in Jamaica, as shown by the report of the Royal Commissioners, without shuddering to think what human nature is capable of” (p. 161).

It is impossible to forbear from asking whether the sentiments of humanity were dead within the breast of the Lord Chief Justice when he defended the exercise of martial law in Ceylon. Now here is a distinct representation,

with all the weight and authority which belong to the office he holds, that the account of the executions and scourgings which were contained in the report of the Commissioners, resembled the atrocities committed under the name of martial law on the occasion of the Irish rebellion ! Any one who reads the account of the latter in Plowden's "View of the State of Ireland," or in Massey's "History of the Reign of George III." (to which latter the Lord Chief Justice refers) will not require to be told that men were massacred by hundreds without the least pretence of inquiry, or the least regard to their guilt or innocence ; and that infernal tortures, devised in all the diabolical wantonness of cruelty, such as pitch caps and the like, were inflicted at the mere caprice of the soldiers, without the least check from the military commanders. In order to make the Jamaica case appear like this, the Lord Chief Justice says that upwards of 1000 persons suffered death *or torture*. The nature of the statement itself shows the spirit in which he wrote : coupling together persons hanged with persons flogged, so as to make as large a total as possible ; and representing that all who were flogged were "tortured," as if every burglar or garotter the judges order to be flogged, or every soldier or sailor flogged for their offences, could be said to be *tortured* ! The Lord Chief Justice was well aware when he wrote those lines that the Royal Commissioners reported that at *one place* only was anything that could be called torture inflicted, that is, a deviation from the ordinary manner of inflicting the punishment of flogging ; and that, in the great majority of cases, the punishment of death was inflicted justly. And would it not have been only common justice to have so stated ? Instead of this the Lord Chief Justice gives to the public only one side of the case, the severities inflicted, without making any reference to the facts which showed their justice or necessity. He enumerates in the most inflammatory manner the number of

persons *executed*, but takes no notice of the number of persons *implicated*; nor even notices the statement of the Commissioners, to the effect that those who were executed were guilty. Was this a *judicial* mode of stating the case? He cited the general statements of the Commissioners, which the popular newspapers had so dilated upon—

“That the punishments inflicted were excessive.

“That the punishment of death was unnecessarily frequent.”

But he failed to observe that according to the interpretation or qualification imposed upon these general and equivocal statements by the other and more particular statements of the report, this does not mean that the punishments of *death* inflicted were excessive, except during the first few days of hot pursuit and natural excitement; for that as regards the trials by court-martial under which alone death was inflicted at a *later* period, the sentences were at all events *just*, and that the only effect of the statement that the infliction of death was unnecessarily frequent, so far as regards that later period, was, that men who would have been executed by the ordinary tribunals had been executed unnecessarily by the courts-martial. The fair result of the *whole* of the report, in short, at least, as regards all but the first few days, was, not that innocent persons had been rashly executed, as the popular notion was, but that guilty men had been executed unnecessarily, in the sense that they might just as well have been executed by the ordinary tribunals. So that fairly interpreted, the report had a meaning just the opposite of what it was supposed to have; for it meant, as regarded all who were tried by court-martial (that is, the great majority of those executed—354 out of 439—and including *all*, except those executed during the first rage of pursuit), “the men were so clearly guilty, and would so assuredly have been executed by ordinary law, that it was not necessary to resort to the more speedy process of martial

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law." The Lord Chief Justice, however, unfortunately had adopted hastily the popular view of the case, and enforced it, in these extra-judicial observations, "with all the weight and influence which belonged to his office," and thus gave a sort of irregular judicial sanction to the vulgar notion that the Governor had connived at a wholesale system of slaughter of innocent men! Whereas, the simple truth was that, as regards all but those killed in the first rage of pursuit (by soldiers over whom even their officers had no control who were *with* them, and therefore *he* could hardly have any who was *absent*), he merely allowed the military commanders, on their opinion that it was necessary for the entire suppression of the rebellion, to put to death by military tribunals a certain number of rebels; one tenth part of those who had taken an active part in the insurrection, and whose lives were forfeited by law, and all of whom, or all but two or three, would have been executed by the ordinary tribunals. How different from this is the view presented so extra-judicially by the Lord Chief Justice, it is needless to point out, and equally is it unnecessary to point out how terribly injurious his inflammatory and one-sided statements must have been to the unfortunate Governor, at that time, quite *enough* the mark for popular odium and hatred, without being held up to obloquy by the Lord Chief Justice, "with all the weight and influence which belonged to his office," and this at a time when further legal proceedings, civil and criminal, were known to be contemplated against him! The Lord Chief Justice, in conclusion, declared that he did this "as a minister of Justice profoundly imbued with what is due to the first and greatest of earthly obligations." But surely the first principle of justice is that a *man shall not be condemned before he is heard!* That surely a man shall not be condemned by a judge before whom he has not been brought; and upon a one-sided view of the case! The case of the Governor was not, in any way, before the Lord Chief

Justice, and the case of the military commander which had been before him was no longer before him; having been dismissed by the grand jury as not one which involved even a *prima facie* case. And was it, indeed, in accordance "with the first and greatest of earthly obligations," that the Lord Chief Justice of England should put forth these hasty and inflammatory observations against them?

This, however, was the view upon which the Governor had been condemned; that the insurrection was put down in a day. A view entirely opposed to the facts found by the Commissioners, and the view taken by the Secretary of State, but which was thus affirmed by the Lord Chief Justice of England, and published to the world, "with all the weight and authority which belonged to his office."

The Lord Chief Justice said, in his note to the charge, that he adverted to the events in Jamaica, only as showing the necessity for legislation if martial law was ever again to be put in force; and there was a passage in his charge which showed that he alluded to Ireland and the possibility of martial law in that country. Truly enough, he said that:—

"So far as this country is concerned, the question may be one of no practical importance. We may look into the long vista of coming years, and feel happily satisfied that the question is not likely to arise here. Years of beneficent government have amongst Englishmen changed the abstract duty of loyalty into a sentiment—I had almost said, an instinct. The sense of duty has become blended with devotion and attachment to the Sovereign. But this, it is sad to think, is not the case throughout the whole of her Majesty's dominions. We know, that only recently in the sister island, where generations of misrule and of political and religious tyranny and oppression in past times have engendered a spirit of disaffection, which even now—when all grievances of every sort and kind, with, perhaps, one single exception, certainly all political grievance, has been removed—still remains, and of which aspiring and wicked men take advantage to produce disturbance and insurrection among the inhabitants. We know, and I say, that only recently, her Majesty's government had under their consideration whether it would be proper to apply martial law." (Charge, p. 21.)

And then, after this came the inflammatory and utterly irrelevant allusion to the former exercise of martial law in Ireland, and the atrocities perpetrated on this occasion, and it was distinctly conveyed that the severities exercised in Jamaica were similar. The natural effect of this was to inflame and excite against the Jamaica authorities, and especially the Governor, the feelings of the Liberals, above all the *Irish* Liberals; and therefore it was only what might have been expected, when a member of parliament belonging to that section of the House excited by this most exciting charge, brought the matter forward.

The very fact, that there should have been such a debate showed the effect of the parallel which had thus been drawn between Ireland and Jamaica; and the very fact that such a parallel should have been drawn showed how entirely the Lord Chief Justice had failed to realise the peril of Jamaica, which was *without a possible parallel* on earth! That the charge of the Lord Chief Justice was pervaded by a prejudice against martial law, arising from a notion of the identity of the legal position of the negroes and of Englishmen, and a jealousy of the possible application of martial law to some portion of the inhabitants of the United Kingdom, was shown in a most unmistakable manner by the debate which followed the delivery of the charge. It has been mentioned that by producing and working upon this impression the abolitionists had effected a combination with the political and philosophical Liberals; and soon after the charge, the latter got up a debate upon the subject in the House of Commons, in the hope of being able to carry a resolution condemnatory of martial law in this country. The question was brought forward by a talented member of the Irish section of the political Liberals; who, of course, would feel that the only portion of the United Kingdom in which the exercise of martial law would ever be likely to be required was Ireland, and who would be inspired with a natural aversion to it, on account of the horrible

excesses which had marked the last occasion of its exercise in that country. The tenor of the debate thus raised may serve to illustrate in a striking manner the entire confusion of ideas which prevailed upon the subject, and the misconceptions to which this confusion had given rise; all equally caused by the excitement which had been raised upon the subject, in the course of the long agitation which had been carried on. The hon. and gallant gentleman (Major O'Reilly), who brought the subject forward with much ability, was all through speaking of England and Ireland, and above all of *Ireland*. And his first words betrayed the fallacy into which the Lord Chief Justice had fallen; that of supposing that the question of martial law in the colonies as against British subjects not of British blood was the same as the question of martial law *against* subjects of British birth or descent either in this country or in a settled colony, whither they may have carried the common law as *their* inheritance and privilege and for *their* protection. For he said:—

“The Lord Chief Justice had laid it down as unquestioned law that no *English* subject to be subject to martial law.”

Even if the Lord Chief Justice had so laid it down, it would have been *obiter*, as lawyers say, and entirely extrajudicial; for the question was of martial law as against African subjects, *not* of British blood or descent. But this was forgotten. It was supposed that the question concerned Irish or English subjects, and the hon. and gallant gentleman spoke on the subject with very natural warmth of feeling:—

“As an Irishman, he said the subject had a vital and thrilling interest. It touched him and his countrymen more than it touched England and Englishmen. To them it was a vague tradition of the past; but to Irishmen, almost within the memory of living men, it had been a bloody and a cruel reality, and even within his lifetime it had been clamoured for by those who ought to have known better.”

Thus it was obvious that the Jamaica case was regarded by the English and Irish Liberals, especially the latter, through the medium of the prejudices arising from the impression that they were dealing with the question of martial law in England or Ireland; as if the necessity could ever by any possibility arise in *either* country which had arisen in Jamaica. And Mr. Forster, the late Under Secretary for the Colonies, who recalled the discussion into the proper channel as a *colonial* question—showed throughout that his disapproval of the exercise of martial law in Jamaica had arisen from his entire failure to comprehend the *danger*. It is plain, that on this point he took the view not of his chief, Mr. Cardwell, nor of the chief legal Commissioner, the Recorder, but of Mr. Buxton, the leader of the abolitionists, a party with whom the hon. member was personally and closely connected. His view was so extreme, indeed, that he could not admit the possibility, at all events in a *negro* colony, of any necessity for the exercise of martial law—as involving the summary trial and execution of rebels; in this view, indeed, going infinitely beyond the Lord Chief Justice, who expressly admitted that there might be such a necessity, and that such a necessity had arisen in Jamaica, at all events for a short time. The hon. member said, obviously assuming that negroes are in the same legal position as English-born subjects:—

“The rights of our *fellow citizens* in the colonies were involved in the question. He believed that in Antigua and Bermuda there had been an undoubted power of proclaiming martial law vested in the executive, and that in Jamaica there had been some doubt as to whether such a power existed. He believed that such acts were a disgrace to the statute book, and are in themselves a source of very great evil.”

That is, laws allowing of the exercise of martial law in cases of pressing necessity for it; arising from rebellions of negroes in colonies, where they are an overwhelming majority, and may be animated by feelings of hostility and

animosity against the English inhabitants ! Such was the view of the Under Secretary of the Colonies, in the Government by whom Mr. Eyre was condemned and recalled ! And such were the views upon which he was condemned and recalled ! The hon. member said :—

“ For his own part, he regarded *any legislation* having for its object to legalise martial law with the greatest possible fear. *Any* attempt to provide for the suspension of the ordinary laws for the protection of life and liberty by the substitution of military authority must be regarded as an abdication of legislative power. He had never believed that martial law, as it was understood in this country, in Ireland or the colonies, was necessary for the purpose of government in those places. In that *opinion he should no doubt be in a minority*, but having paid close attention to all that had happened in Jamaica, and having looked over all similar cases in recent history, he had seen no case in which proclamation of martial law was a necessary evil. He admitted that to the restoration of peace and the preservation of authority everything else must give way, and that whatever acts of military authority were absolutely necessary for that purpose must be sanctioned ; but he had seen no case where what was embodied in the notion of martial law, the power of punishment after the suppression of the outbreak, was essential. The Lord Chief Justice had pointed out that within twenty-four hours after the issue of the proclamation peace and order were restored in Jamaica ; and nobody could doubt that peace would have been equally restored by the action of the troops whether martial law had been proclaimed or not.”

The hon. member evidently regarded his views upon the subject as extreme, and they went far beyond those of the Lord Chief Justice, who had admitted that if ever there was a case for the exercise of martial law, this was that case, and had expressly admitted the propriety of executions by courts-martial in flagrant cases, in the event of any further disturbances ; and although it is true he spoke strongly about the insurrection being virtually over in twenty-four hours, he forgot that ten days after the outbreak armed rebels met the troops in the field ; and he himself afterwards said, that the case of Gordon, who was tried on that day, occurred very early in the duration of martial law ; so little had he considered the facts. Thus, therefore, the Lord Chief Justice refutes and exposes the Under

Secretary's view of the law, and the Lord Chief Justice's view of the facts is refuted by the evidence, and, indeed, by himself. Such were the hopeless inconsistencies of the men by whom this unhappy gentleman was condemned and denounced! The mind of the late Under Secretary was in hopeless confusion on the question :—

“Nothing could be stronger than the statement of the Lord Chief Justice as to the power of suppression reposed in the Government. ‘A rebel in arms stands in the position of a public enemy, and therefore you may kill him in battle, or you may refuse him quarter, dealing with him in this respect as with a public enemy.’ This showed that as long as actual rebellion was in existence martial law was not needed for the suppression of any disturbance. As to the allegation that the proclamation of martial law was necessary for the punishment of those who had taken part in the rebellion, such an argument showed that no real necessity existed for martial law at all.

So that the hon. gentleman could see no harm in the execution of prisoners *without* trial; but was shocked at the idea of their being *tried*! And again he had no notion of the *deterrent* influence of punishment under martial law; which the Lord Chief Justice distinctly admitted :—

“After all the centuries in which we have been labouring to protect subjects of the Queen from any exercise of arbitrary power, argument ought not to be needed for the purpose of combating the opinion that it was necessary to suspend the common law, not for the restoration of peace and order, but merely for the purposes of punishment.”

No one had ever contended for this; but for the efficacy and necessity of punishment *as a means of suppression*. And strange to say, the hon. member, so much was his mind involved in confusion on the subject, went on as Mr. Mill and the Lord Chief Justice had done, unconsciously to admit the entire legality of the trials by court-martial, for he insisted on it that martial law meant regular military law; according to which all the trials were regular and legal, for he said :—

‘He might call attention to the fact, that a variance existed between the instructions issued by the Admiralty at the close of last year, for the guidance of naval officers, and the law as now laid down by the Chief Justice. There were two theories as regarded martial law. *One appeared to have been held by the principal lawyers in all stages of our history, from Chief Justice Hale to the present Chief Justice. This was, that if by any unfortunate circumstance martial law were proclaimed in any part of her Majesty’s dominions, it meant military law, and the giving to military and naval officers similar powers with regard to civilians to those which they possessed with regard to members of their own services.* The result would be a court-martial, constituted under the same regulations as a court-martial for the trial of a naval or military officer. That was one theory spoken of by the Lord Chief Justice; the other was that martial law applied to civilians is not military law, but the arbitrary will of the executive. This latter theory the Chief Justice regarded as a heresy of recent growth, and it was no doubt the theory on which the Jamaica authorities acted, and also the theory on which the authorities in Ceylon and other places had acted before. This theory had high authority to back it; it was in accordance with the *dictum* of the Duke of Wellington that martial law was the will of the General, and, in fact, meant no law at all. He particularly wished, however, to call attention to the fact that the interpretations of martial law by the Lord Chief Justice differed materially from the instructions issued by the Admiralty. The instructions stated that the arbitrary will of the officers was to supersede the ordinary law. Such a discrepancy ought not to exist; the Lord Chief Justice’s ruling ought to be acted on if right, and if wrong the law should be explained and confirmed by Parliament. He had refrained from blaming the Jamaica authorities, but felt that in the events of the Jamaica rising was to be found a lesson deserving their most serious attention; and, quoting the Lord Chief Justice’s charge in that part which declared with respect to the continuance of repressive measures after the Jamaica risings had ceased, that a state of martial law should be limited to actual rebellion and to armed resistance, he contended that not only our duty as a nation and our safety as a people, but considerations of still higher importance demanded that acts such as were done in Jamaica under martial law should not be repeated.”

If this meant the admitted excesses, *i.e.*, the hasty executions, without trial—many of them, indeed, were murders, by black soldiers, in the earlier part of the rebellion,—of course all will agree with the hon. gentleman. But he was, evidently, speaking also of executions under trials by court-martial. Yet, in the earlier part of the passage, he said, martial law meant the application of

regular military law to civilians ; according to which all the *trials*, including Gordon's, would be regular and legal. No doubt the hon. member said this under the mistaken impression derived from the Lord Chief Justice that capital sentences could not be inflicted by courts-martial, composed of *three* officers, and of officers of both services, and this only shows upon what hasty, erroneous, and confused notions of the law the Governor was condemned. The hon. gentleman, however, admitted that martial law meant *trials by court-martial*, and yet objected to the exercise of martial law. The confusion of ideas which all this evinced, and which it is only fair to the hon. member to say, arose from the charge of the Lord Chief Justice, was at once observed upon by the Secretary of State (Mr. G. Hardy) who ascribed it to that source :—

“ While deploring the fact that necessity sometimes compelled the proclamation of martial law, he noticed that the hon. member had admitted the occasional occurrence of such a severity, nor did the Lord Chief Justice ignore the necessity which might arise of setting aside the law of the land and securing with great vigour the military law, such as is enforced by a general in an enemy's country. The Lord Chief Justice, indeed, *admitted in the passage immediately following that referred to by the hon. member, that though an insurrection were suppressed, it might be necessary to continue the enforcement of martial law, in order to strike terror into the minds of the people for their better order in the future.* Everyone was agreed that in cases of insurrection and danger to the lives of peaceful citizens it was the duty of those exercising the supreme power to put aside the ordinary laws, and to proclaim military law until the insurrection was suppressed ; and it did not need the existence of armed resistance to constitute insurrection. He knew of no one who said that the Jamaica authorities who had been referred to were wrong in using, in the first instance, the most forcible means to put down the rising. The hon. member for Bradford (Mr. W. E. Forster) had modified his assertion that martial law should never be put in force unless the troops could not act without it. And he believed now that Governments, aided by troops, could act efficiently without martial law. But was it a more fair and straightforward proceeding to act without martial law than to proclaim it and act accordingly ? ”

Mr. Forster, in answer to this, observed that,—

“ As he read the Lord Chief Justice's charge, the executive could act

with military power, and, therefore, in his opinion, it would not be necessary to act by military law."

But the Secretary of State answered :—

"If military force were adopted, it was surely fairer to announce to those against whom it was proposed to act, that the ordinary course of law would be superseded?"

And this, indeed, pointed to the fundamental fallacy which had pervaded the entire charge of the Lord Chief Justice, the obvious inconsistencies of which were with frank courtesy pointed out by the Secretary of State, who did not hesitate with delicacy to ascribe it to the true cause, an excitement of feeling :—

"He could not but sympathise with the Chief Justice—of whom he desired to speak with all the respect due to his high position, the more so as he was evidently animated by feelings so warm and hearty for the due administration of justice to the meanest of her Majesty's subjects—to some extent in the views which he had expressed; but it was evident that the Chief Justice himself, had, he would not say vacillated, but gone from one side to another, admitting that the necessity had arisen for acting with peculiar rigour, or in other words, with military law, and yet at the same time doubting whether the insurrection had not been suppressed at a sufficiently early date—a matter about which the authorities in Jamaica held a different opinion—to render the continuance of that military law unnecessary. He would, moreover, have admitted that if the insurrection had been in existence, as it really was in the opinion of those in the colony, the employment of military law would have been necessary. In page 127 of his charge, the Chief Justice stated, that he felt deeply sensible of the exceeding difficulty of his task. He had for the most part been travelling over untrodden ground, and could find no judicial decisions by which he could in any way be guided. Not only was he without the advantage of having had the matter discussed by members of the bar—a course by which the researches of able and learned men would have been brought to his assistance—but until the previous day he had no opportunity even of consulting with the learned and excellent judge, who sat at his side. The learned Chief Justice had *evidently been shocked by his view* of what had taken place in Jamaica with reference to the particular case under the decision of the grand jury, and he placed before the grand jury, not only the facts of the case, but *also his opinion*, with a view to its submission to the petit jury. The charge should therefore be taken with those qualifications."

Nor did the Secretary of State shrink from throwing out that in the opinion of competent persons the Lord Chief Justice was *wrong* in his view of the law :—

“The right hon. gentleman, the Judge-Advocate of the late Government (Mr. Headlam), had, he knew, given great consideration to cases of this kind ; and the opinion, not only of the right hon. gentleman, but also of a right hon. friend of his, a former Judge-Advocate (Sir D. Dundas), whose absence from the House he sincerely regretted, was contrary to that held by the learned Chief Justice. The learned Chief Justice, referring to these right hon. gentlemen, said it was not their peculiar business to enter upon questions of this nature. But, with all due deference, the attention of the learned Chief Justice himself did not appear to have been previously employed in this direction. He trusted that neither in Ireland nor in the United Kingdom, nor in any of the colonies, would the occasion ever again occur for the employment of those powers which were necessary to the executive in times of great emergency. At the same time he implored the House of Commons not to place an impediment in the way of those who were acting in distant spheres, and to whom, with great responsibilities, was committed the duty of upholding the authority of the Crown and the rights of this country.”

And the House of Commons responded to this appeal by *declining* to pass such a resolution. On that occasion also a distinguished member of the late Government, the Secretary of State who had displaced Mr. Eyre, made declarations of his opinions which clearly disclosed that he had taken that course under erroneous notions as to the law, and on the assumption that the exercise of martial law was illegal, or that even if allowed by statute its exercise was subject to the risk and peril of censure on the opinion of others, after the event, as to the *necessity* for its exercise. He admitted what he called the law of necessity, but said as to the *continuance* of it :—

“The law of necessity to which he had referred was, in his opinion, strictly limited in time, and operative only for repression, and not in the slightest degree for punishment ; and in the memorable words of Sir James Mackintosh, to continue to act upon that necessity after the necessity itself had expired was an enormous crime.”

But Sir J. Mackintosh no doubt meant that to do so

wilfully or recklessly was an enormous crime, for if not so, what would otherwise be an admirable sentiment would be an enormous absurdity. For it is obvious that a matter of this nature must necessarily be, more or less, a matter of *opinion*; and to make an error, or rather *difference* of opinion, where no one could *prove* that it was an error, criminal or even culpable would be surely irrational. It was evident that the right hon. gentleman—indeed he avowed that he did not recognise martial law at all—adopted Mr. Mill's view, which had been adopted by the Lord Chief Justice, that there was only a law of necessity, the fallacy being in forgetting that of this necessity somebody must judge; and that if it should be other parties, at a distance and long after the event, and through the mists of intervening excitement, the most monstrous injustice must be done. Nevertheless this *was* the view avowed by the Secretary of State who condemned Mr. Eyre, and it was the view upon which he was condemned. And yet in the Ceylon case Mr. Cardwell had concurred with Earl Russell in the opinion that if a Governor acted in such a matter with the advice of his Council he could not be culpable. The late Secretary of State said, truly enough, as to the question of excesses—

“The chief and most fertile source of abuse, when the deplorable emergencies to which the motion pointed occurred, was the fact that usually the inferior agents over whom the higher authorities were called upon, in circumstances of extreme difficulty, to exercise control, were guilty of excesses which *their superiors would, if they could, have been glad to restrain.*”

But it may be open to consideration whether the right hon. gentleman had not forgotten that, when he condemned and recalled Mr. Eyre, partly because he had not issued instructions to the *military* officers for prevention of such excesses, which for the most part were committed by soldiers in the *absence* of their officers, and therefore no regulation could have prevented, and even if they might,

the regulations necessary to prevent which could only have been lawfully issued by the Commander-in-chief.

It must be manifest from this discussion, as from the former debate upon the subject, that Mr. Eyre had been condemned and recalled, upon most mistaken views both as to the law and as to the facts. That is to say, on the assumption that martial law meant no more than the use of military force for the suppression of actual insurrection or open outrage: in other words that it had no legal meaning or existence at all, since this may be done at common law, and that it did not authorise the use of *deterrent* measures, nor the summary trial and execution of persons concerned in the rebellion. Of course upon this theory the whole *onus* was thrown upon the parties engaged in the suppression of proving the necessity for the particular *executions*, and not merely for martial law in general; and as it is practically impossible to *prove* a mere matter of opinion, and the necessity for deterrent measures must necessarily be a matter of opinion formed upon a general view of the whole condition of the colony, it followed, that, upon this theory, the unfortunate Governor, as to the continuance of martial law at all events, was left without defence, and lay, to use the language of the law, in mercy, and might be censured, condemned, recalled, denounced, to any degree, and any extent to which the pressure of adverse opinion might appear to demand. And so accordingly it was. It was in vain for him to say, and to show, that he honestly believed the continuance of these measures necessary for the safety of the colony; and that he reasonably so believed for the simple reason that his whole Council, and every soul in the colony (except the rebels) so believed. All was in vain; for the Secretary of State said the question is not what you and your Council thought necessary, but what *I* think was necessary, under pressure of a powerful party of my supporters, or what a *jury* may think was necessary, after two years of hostile agitation against you, and

thousands of miles distant from the scene of the events in question. So he could not, upon this theory, possibly defend himself, and lay defenceless at the mercy of the Government. For how on earth can any man *prove* a matter of opinion, such as the necessity for the continuance of deterrent measures? Thus, on this theory, the Governor, however blameless, was defenceless, and it was upon *this* theory and this view of the law he was condemned!

The natural effect of the charge of the Lord Chief Justice and of its *publication* was to stimulate further prosecutions, and accordingly another prosecution for murder was attempted against Mr. Eyre. An application was made at Bow Street, before Sir T. Henry, the senior magistrate, for a warrant against him on the charge of being accessory before the fact to the murder of Gordon, but the worthy magistrate declined to entertain the application, on the ground that a grand jury had rejected the accusation as against the principals in the supposed murder.

The promoters of the prosecutions after this abandoned further attempts at prosecutions for murder; but upon the strength of the charge of the Lord Chief Justice they applied to the Attorney-General (Sir. J. Rolt) to institute a prosecution against Mr. Eyre under the Colonial Governors Act, for alleged misdemeanours in his office, of which they laid before him an elaborate statement, which afterwards formed the basis of an indictment against him. The attorneys for the Jamaica Committee, as the promoters of the prosecution were called, Messrs. Shaen and Roscoe, wrote thus to Sir John Rolt, the Attorney-General (July 10th, 1867):—

“We are instructed by Mr. John Stuart Mill, M.P., and Mr. Peter Alfred Taylor, M.P., on behalf of the Jamaica Committee, to submit to you the accompanying statement of illegal acts committed by Mr. Edward John Eyre, as Governor of Jamaica, subsequently to the riot which took place at Morant Bay, in that island, in October, 1865. The allegations contained in that statement are all made on the authority either of official correspondence, printed by the direction of her Majesty or of Parliament;

or of the evidence taken by the Jamaica Royal Commission in 1865, and we have added references showing the evidence upon which each allegation is founded. We are advised that the acts complained of form a series of misdemeanours, and that the appropriate mode of submitting them to an English court of justice would be by a criminal information filed by the Attorney-General in the Court of Queen's Bench, under the provisions of the Act 42 Geo. III., c. 85, and we are therefore instructed, in forwarding this list to you, to ask whether, in your opinion, it does not present a case calling for the action of the public officer to whom is entrusted the high function of interfering in fitting cases of this nature for the vindication of law and justice.

"You are probably aware that our clients have already made more than one attempt to obtain the judgment of a Court upon one of the series of illegal acts now submitted to your consideration—those, namely, connected with the execution of Mr. G. W. Gordon. Our clients take the liberty of submitting to you that the want of success which has attended the steps they have hitherto adopted, forms a strong additional reason for the institution of proceedings by the Attorney-General in order to prevent an absolute failure of justice.

"We venture to send you with this a copy of the charge of the Lord Chief Justice, in the case of *The Queen v. Nelson and Brand* as being the latest and most complete authority upon the law involved in these proceedings."

The list of illegal acts inclosed set forth the same matters of accusation as those which afterwards proved the subject of an indictment preferred by the promoters, and which were as follow. It will be observed that the Committee did not proceed merely for the excessive or abusive exercise of martial law, but for *any* exercise of it at all, pretending it was totally illegal, in the face of a colonial statute, of the report of the Royal Commissioners, and of the opinion of the law advisers of two successive Governments.

**"LIST OF ILLEGAL ACTS COMMITTED BY EDWARD JOHN EYRE, LATE
GOVERNOR OF JAMAICA.**

"I. On the 13th of October, 1865, at Kingston, in the island of Jamaica, under colour of proclaiming martial law in accordance with certain statutes of the island, the said Edward John Eyre issued a certain illegal proclamation, purporting to declare war against certain of her Majesty's subjects, namely, against such of the inhabitants of the county of Surrey, in the island of Jamaica, except in the parish and city of Kingston, as her Majesty's military forces might consider opposed to her Majesty's Govern-

ment and the well-being of her loving subjects (Evidence, p. 85) ; and purporting to place such subjects as aforesaid in the position of alien enemies ; and purporting to confer upon the said military forces the power of exercising the rights of belligerents against such subjects of her Majesty, whereby Colonel Nelson was induced to treat certain of her Majesty's subjects as alien enemies, and at least 439 men and women were wilfully and illegally put to death by her Majesty's troops ; at least 600 men and women were illegally flogged, many of them with cats partly formed of wire ; and 1000 houses were wilfully and illegally destroyed by fire, though no resistance was ever made to the troops by any of the people so flogged or put to death, or by any other persons. (Return in Appendix to Evidence, p. 1143.)"

It will be seen that the first part of this charge is for declaring martial law at all, and the latter part, the last two lines, contained a statement that no resistance was ever made to the troops, not only by any of the people so put to death, *or by any other person !* for which reference was given to p. 1143 of the Evidence, where, however, it need hardly be said no such statement as *that* appears, which would be directly contrary to the evidence ; and all that is stated is that so many were put to death, 354 under sentence of court-martial, and of these 294 were before the 25th October, on which day a Haytian schooner was seized with arms and ammunition, and a day or two before the insurgents had *met the troops in the field*. It will be observed that all the executions were charged as illegal, the earliest as well as the latest. The next two articles of charge related to the first case of all :—

"II. On the 13th October, 1865, at Port Morant, in the island of Jamaica, the said Edward John Eyre sanctioned, advised, and abetted the illegal trial of Edward Fleming, a civilian, for an offence alleged to have been committed before such proclamation of martial law as aforesaid, by an irregular and unlawful court-martial. (Evidence, 3914-7 ; Disturbances in Jamaica, Part II. p. 5.)

"III. At the said time and place the said Edward John Eyre aided and abetted the illegal execution of the said Edward Fleming in pursuance of the sentence of the said alleged court-martial upon such illegal trial. (Evidence, 3917 ; 32,244-6.)"

The references, here given are merely to Mr. Eyre's

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admission of his knowledge of the execution, but in the examination of Colonel Nelson (Evidence, p. 683) it appears that the man was tried the day after martial law for threatening life, and it does not appear, that it was before martial law; but, even if it did, it would be immaterial if the act was connected with the rebellion, as it obviously was.

The next charge mixed up two distinct matters—an arrest by order of Mr. Eyre, and a flogging without any authority from him :—

“IV. On the 12th October, 1865, at Kingston, and on the high seas, the said Edward John Eyre aided and abetted the false imprisonment and ill-treatment of Richard Clark, who was, in the presence of the said Edward John Eyre, confined and manacled on board her Majesty’s ship ‘Wolverine’ for two days, and was then put ashore and given into the custody of Gordon Duberry Ramsay until the evening, when he was conveyed to Port Antonio. After five days the said Richard Clark was again taken in the ‘Wolverine’ (the said Edward John Eyre being on board and having notice thereof, and having actual command of the operations then and there carried on) to Morant Bay, where he was further imprisoned for twenty-four days, and having been twice flogged without trial was released. (Evidence, 3246, *et seq.*)”

In the evidence thus referred to, all that appears as regards Mr. Eyre is, that he was on board when the man was in the vessel. It does not even appear that he had advised the arrest, and it plainly appears, that all the rest was under *military* authority; and it also appears that, at all events, it was testified against the man, that he had said every white man should be killed.

“V. On the 14th October, 1865, at Morant Bay, the said Edward John Eyre aided and abetted the trial by similar irregular and unlawful courts-martial, and the subsequent execution, of four persons of whose names no record was preserved, but all of whom were civilians, and who were unconvicted by any proper tribunal of any offence whatever. (Evidence, 3922-7.)

“VI. On the said 14th October, 1865, at Morant Bay, the said Edward John Eyre aided and abetted the illegal trial for an alleged civil offence by a similar irregular and illegal court-martial, and the subsequent illegal

flogging of a civilian, a subject of her Majesty, unconvicted of any offence, and of whose name no record was kept. (Evidence, 3927.)”

Here it will be observed, that it is obstinately assumed, in defiance of the Report of the Commissioners and the opinion of the law officers of the Crown, that the trials *were* “illegal.” All that appears in the evidence is that Mr. Eyre said he was aware they took place.

“VII. On the 16th October, 1865, at Port Antonio the said Edward John Eyre aided and abetted the trial by irregular and illegal court-martial, and the subsequent hanging of twenty-seven persons, named respectively [setting out their names], all of whom were civilian subjects of her Majesty and unconvicted of any offence. (Evidence, 3951-2; Ib. p. 1139.)”

All that appears in the evidence is, that Mr. Eyre stated, that at Port Antonio twenty-seven persons were tried and executed by sentence of court-martial. The illegality alone, it will be observed, is charged. It is not suggested that the men were not guilty, or were not fairly tried, or that Mr. Eyre had anything to do with the trials.

“VIII. On the 17th October, at Kingston, the said Edward John Eyre personally arrested George William Gordon, a member of the Jamaica Legislative Assembly (Evidence, 18,478-87, 31,171, 35,386), and falsely imprisoned the said George William Gordon by causing him to be conveyed against his will, and without lawful cause, on board the ‘Wolverine,’ one of her Majesty’s ships of war (Evidence, 35,386; Disturbances, p. 6), and detained him on board the said vessel for three days.”

The absurdity of this charge will appear when it is borne in mind that the Secretary of State had approved of the arrest of Gordon, and that even the Lord Chief Justice had not ventured to dispute *that*, and though he impeached the *removal*, his opinion was irrelevant and extra-judicial. However, upon that opinion the next charge was evidently framed.

“IX. On the said 17th October, 1865, the said Edward John Eyre illegally and oppressively conveyed the said George William Gordon in such illegal custody from the parish of Kingston, where the ordinary and due course of justice was not interrupted, to Morant Bay, where the said

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Edward John Eyre had suspended the ordinary and due course of justice, and had established in its place, an illegal, cruel, and oppressive system of military government (Disturbances, p. 7), intending thereby to deprive the said George William Gordon of the protection of her Majesty's courts of justice."

This charge is, upon the face of it, repugnant; for if martial law was *not* legal, the man's removal did not in the least take him out of the protection of the common law, and if martial law was legal, then his removal was rightful, if he was *amenable* to martial law.

"X. On the 20th October, 1865, at Morant Bay aforesaid, the said Edward John Eyre gave the said George William Gordon into the custody of Alexander Abercrombie Nelson, a colonel in her Majesty's army, and directed the said Alexander Abercrombie Nelson to prepare a charge against the said George William Gordon, and to have him, although a civilian, tried by court-martial, intending thereby to secure the trial of the said George William Gordon by persons who, as the said Edward John Eyre well knew, were incompetent to give him a fair trial, and had already made up their minds that he was guilty (Evidence, 31,014-9); in consequence of which the said George William Gordon was tried by a pretended court-martial, illegally constituted, and which, if regularly constituted, could have had no jurisdiction to try him, which pretended court-martial, on the 21st October, 1866, affected to find the said George William Gordon guilty upon evidence manifestly insufficient and untrustworthy, and large portions of which were inadmissible, and in pursuance of such finding he was, on the 21st day of October, condemned to death. (Evidence, p. 621.)"

This charge was utterly in the teeth of the evidence, which showed that Mr. Eyre did *not* direct Colonel Nelson to prepare a charge *unless the evidence was sufficient*, and did not give any directions as to the construction of the court. At the very place referred to Colonel Nelson stated:—

"*I had received no instructions as to Gordon, except that I was to examine and see if there was sufficient evidence.*" (Min. of Ev., p. 622, Q. 31,014.)

"XI. On the 22nd October, 1865, the proceedings, finding, and the sentence of the said pretended court-martial, which proceedings included the evidence on which the said finding and sentence were found, and showed what was the constitution of the said pretended court, were laid before the said Edward John Eyre, and he, the said Edward John Eyre, thereupon

wrote a letter to the said Colonel Alexander Abercrombie Nelson, in the words and figures following:—

“‘Your report and the proceedings relative to G. W. Gordon have just reached me through the General, and I am returning them to him with the expression of my entire concurrence in the justice of the sentence and in the policy of carrying it into effect. *I believe the moral influence which the punishment of such a man will have upon the entire community will be very great, and do more to check sedition than all we have done yet.* I should think that in a few days, if the Maroons do their work properly, you will be able to report that the chief rebels are either captured or slain, and that the time has arrived for *offering an opening* to all the others (except actual murderers) *to come back to their allegiance.* I have been hard at work all day writing, except the brief time I was at church, and I am very tired, which must be my apology for a brief note.’ (Evidence, p. 1018.)

“After the receipt of the said letter, the said George William Gordon was by the orders and in the presence of the said Colonel Nelson hung by the neck till he was dead, to wit, at Morant Bay aforesaid, on the 23rd day of October, 1865. (Evidence, 31,107-113.)”

In this charge, there is no mention of the confirmation by the military commander and the approval by the Commander-in-chief, nor of the opinion of the latter that the circumstances of the colony called for prompt and decided action in the case (Min. of Ev., Ev. of Gen. O'Connor).

The next charge related to some arrests alleged to have been ordered by the Governor, and the first related to the case of the person to whom the letter was written (p. 14), by the editor of a paper, as to powerful demonstrations “which they foresaw were likely to lead to charges of anarchy and tumult.”

“XII. On the 22nd October, 1865, the said Edward John Eyre commanded the illegal arrest, without any process of law, of Dr. Robert George Bruce, a civilian, and the illegal seizure of his papers, at Vere, being a place where the ordinary and due course of justice had not been interrupted (Evidence, 17,662); and also commanded the said Robert George Bruce, when so falsely and illegally arrested and imprisoned, to be conveyed to Uppark Camp, and thence to Morant Bay, both being places within the district where the said Edward John Eyre had suspended the due and ordinary course of justice, and established as aforesaid an illegal, cruel, and oppressive military government, intending that the said Robert George Bruce should be deprived of the ordinary protection of law, and should be

tried by such illegal and irregular court-martial as aforesaid (Evidence, 17,662 *et seq.*, 15,218 *et seq.*; Disturbances in Jamaica, p. 66), in consequence of which the said Robert George Bruce was, on the 23rd day of October, 1865, arrested and carried from Vere to Spanish Town to the said Edward John Eyre, handcuffed and tied with ropes in a cart, after which the said Edward John Eyre transferred him to the custody of Lieutenant Mac-Glashan, and ordered him to be conveyed to Uppark Camp and thence to Morant Bay. The said Robert George Bruce was imprisoned and treated with great rigour for sixty days, and was then discharged without trial eighty miles from his home, broken in health and ruined in position and prospects. (Evidence, 15,218—15,243.)”

Upon reference to the evidence it will be seen that the party was arrested by order of a military officer, and all that appears as to the Governor is that he saw the party in custody. For anything that appears, the rest might be perfectly legal, and it

The next charge related to a flogging inflicted on one of the persons arrested by order of the Governor :—

“XIII. On the said 22nd October, 1865, the said Edward John Eyre commanded the illegal arrest, without any process of law, of Alexander Phillips, a civilian, of Vere, aforesaid (Evidence, 17,662), and also commanded the said Alexander Phillips, when so illegally arrested, to be conveyed to Uppark Camp, and thence to Morant Bay (Disturbances in Jamaica, p. 66; Evidence, 17,119 *et seq.*, 17,662 *et seq.*), intending that the said Alexander Phillips should be there tried by such illegal and irregular court-martial as aforesaid (Disturbances, p. 66); in consequence of which the said Alexander Phillips was so arrested and conveyed to Morant Bay, and was there falsely and illegally imprisoned until the 4th day of November, 1865, when he was flogged without trial and released. (Evidence, 17,158—17,165.)”

There is not a word in the evidence to show that the Governor had anything to do with the flogging, or even knew of it.

“XIV. On the 26th October, 1865, the said Edward John Eyre commanded the illegal conveyance of Benjamin Morris, a negro, then a prisoner at Uppark Camp aforesaid, to Morant Bay, intending that he should be there tried by one of the said irregular and illegal courts. (Disturbances, p. 66.)”

No one could doubt that in time of rebellion the Governor had power of arrest.

The next was a general charge of arrest of persons out of the declared district, as if arrest was an exercise of martial law, or as if men could not cause crime in a place where they were not actually present.

“XV. The said Edward John Eyre directed, encouraged, and abetted his Executive Committee, the Custos of Kingston, and other civil authorities, illegally, cruelly, and oppressively, to arrest without warrant of law, and without reasonable cause, and in divers parts of the country, not pretended to be placed under the jurisdiction of martial law, and in some cases more than a hundred miles distant from the district to which the said proclamation applied, and to convey into the proclaimed districts, and there to hand over to the military authorities the persons following, that is to say : [setting out a list of names] and subsequently sanctioned such arrests and traditions as aforesaid (see letter, Eyre to O'Connor, Evidence, p. 1134), whereby some of the aforesaid subjects of her Majesty suffered death, and many others were flogged and sentenced to long terms of imprisonment with hard labour. (Evidence, Return in Appendix, p. 115 *et passim*.)”

This charge, besides being founded upon an evident fallacy, is repugnant on the face of it ; for if martial law was illegal, it could make no difference whether the men were arrested in or out of the district, nor where they were taken, since everywhere martial law would be equally illegal. But if martial law was legal, then they would be removable if *amenable* to martial law, which would depend upon whether they had incited to or aided the rebellion, and that was the matter to be tried. Moreover, the charge involves this evident fallacy, that a man cannot cause or commit a crime in a place when he is not personally present. This is contrary to plain sense, undoubted fact, and elementary principles of law. A man is as much guilty of crimes he *causes*—and commits by causing—as of crimes he *personally* commits with his own hands ; and if he incites others to commit crimes of murder and insurrection a hundred miles away he is as much *guilty* as they, and infinitely more dangerous, because more *crafty and designing*.

The next charge is characterised by a singular want of candour. It has already appeared in previous portions

of this work that certain persons, including Gordon, were arrested and sent into the declared district for the military authorities to see if they were amenable to martial law, *i.e.*, if there was evidence that they had caused or incited to the rebellion within the district. These were the plain express instructions in Gordon's case and the *implied* instructions in all, the whole evidence showing that the Governor had nothing to do with the *trials*, conceiving, as did the officer, that they were entirely under military authority, and that all he did was to send them such evidence as had been collected, and let *them* judge of its effect. In the case of Gordon they considered the evidence was sufficient, and tried him. In the others they thought *not*, and told him so, and he *at once acquiesced*, supposing no other evidence could be obtained. It appears scarcely credible that upon this the following charge should have been concocted :—

“XVI. On the 31st October, 1865, the said Edward John Eyre called upon his Excellency Major-General O'Connor to direct that certain persons—to wit, Samuel Clarke, Robert Levys, and others, arrested as aforesaid by the civil authorities and others without authority at law, and beyond and out of the pretended jurisdiction of martial law, and then illegally, arbitrarily, and oppressively confined at Uppark Camp—should be sent to Port Royal on the following day to be embarked on board a man-of-war, for Morant Bay, in order that they might be there tried by pretended courts-martial ; in consequence of which the said Samuel Clarke was so tried by a pretended and illegal court-martial, and was, upon wholly insufficient evidence, as appears by the proceedings of the court-martial, convicted and executed. And further, upon the same day, the said Edward John Eyre called upon and requested his Excellency Major-General O'Connor to order the delivery of certain other persons—to wit, W. Kelly Smith, E. J. Goldson, J. M. Vaz Roach, Alexander Miller, Reverend E. Palmer. Reverend J. H. Crole, Thomas Harvey, and William McCormack—so arrested as aforesaid, and illegally, arbitrarily, and oppressively confined upon her Majesty's ship ‘Aboukir,’ for transport to Morant Bay, in order that they might be there tried by pretended courts-martial for expressing sentiments alleged to be of a seditious nature, before, and mostly many months before, the outbreak at Morant Bay ; and for the purposes of such pretended trial, the said Edward John Eyre caused and procured the civil authorities at Kingston aforesaid to get up and arrange evidence of such

acts as aforesaid, for the purpose of being sent with the said prisoners to Morant Bay ; in consequence of which the said above-mentioned persons were so delivered up and sent to Morant Bay and suffered long illegal imprisonment, and some of them were illegally and grievously flogged. (Evidence, *passim*.)"

This charge is framed in terms entirely incorrect and inconsistent with the facts, as disclosed in the evidence referred to, and in the extracts from the evidence set out in a previous portion of this work, as will at once be seen on reference thereto. These persons were *not* "sent to be tried for expressing sentiments months before the outbreak," they were sent that the military authorities might see if the evidence sufficiently connected them with the outbreak to allow of their being tried ; and on its being intimated to Mr. Eyre that it did *not*, he at once acquiesced, and only suggested that they should be detained to answer any *common* law charge arising out of their acts, which of course would be perfectly legal, and some of them were tried by ordinary law. As to the flogging of any of them, it is not even pretended in the charge, and there was not an atom of evidence that he knew anything about it, and it afterwards turned out that he did not. Upon the *real facts*, as disclosed in the *evidence*, all he did was *strictly legal*.

The next was a similar charge, relating to the persons mentioned in charge xv. ; and the letter to him from the other, mentioned at p. 14 :—

"XVII. On the 6th November, 1865, the said Edward John Eyre required his Excellency Major-General O'Connor to direct certain subjects of her Majesty, to wit, the said R. G. Bruce, and one Sydney Levien, then illegally and arbitrarily imprisoned at Morant Bay, to be further illegally detained at Morant Bay aforesaid till further orders, Brigadier-General Nelson having declared that he did not consider himself justified in arraigning the said subjects of her Majesty before a court-martial. (Disturbances, p. 158.)"

The answer to this is in substance the same as to the last, viz., that they were sent to be dealt with by the

military only, *in case* the evidence should warrant it ; and when it was found that, in the opinion of the military authorities, it did *not*, they were detained to meet the common law charge, upon which one of them was actually convicted under ordinary law ; and no one who reads the letter at p. 14 of this work will doubt that there were reasonable grounds for their arrest and detention.

Such were the charges which, after the lapse of a year and a-half, and after all the advantage of a Royal Commission of Inquiry, the assailants of the Governor—the Jamaica Committee, as they were called—had been able to concoct against him. It will be seen that in every instance they are either contrary to the evidence taken before the Commission ; or, at all events, are founded upon an unfair and imperfect view of the facts thus disclosed. In not one single instance is the charge founded upon the *truth*, the *whole* truth, and *nothing but* the truth ; but in *every* instance the charge is, in some respects, *at variance* with the real and whole truth upon the matter. Of course, therefore, the law advisers of the Crown could not entertain them.

After taking time to examine into the evidence on which they professed to be preferred, on the 13th July, 1867, Sir John Rolt, the Attorney-General, sent the following reply to the solicitor for the prosecution :—

“I beg to acknowledge the receipt of your letter of the 10th instant and accompanying papers, which I return.

“The case of Governor Eyre has already received my careful consideration, and I have not thought it right to file a criminal information in the Court of Queen’s Bench against him.

“I have now perused the statement forwarded by you, entitled, ‘List of Illegal Acts, &c.’ and do not find anything that induces me to alter the conclusion at which I had previously arrived.

“With the charge of the Lord Chief Justice to the jury in the case of the Queen *v.* Nelson, also forwarded by you, I was of course previously familiar.”

Thus, therefore, there was again a deliberate and well-

considered decision on the part of the law advisers of the Crown *not* to institute any prosecution against Mr. Eyre upon any of these numerous matters. And let it be borne in mind that the Solicitor-General was Sir William Bovill (now Lord Chief Justice), and that the junior counsel for the Crown was Mr. Hannen, now Mr. Justice Hannen. All three of these eminent lawyers were in a few months numbered among the judges of the land; and, adding their opinions to those of Sir Roundell Palmer and Sir R. Collier, it would be difficult to imagine a greater weight of authority, apart from a judicial decision. And certainly it might have been ample enough to satisfy a body of men, whose only object was to attain to the truth, to do justice, and to ascertain the law. But it was not sufficient to satisfy the Jamaica Committee. They now resolved themselves to prosecute Mr. Eyre on the charges thus rejected by the law advisers of the Crown, and accordingly commenced another prosecution against him for high crimes and misdemeanours under the Colonial Governors Act.* He was charged at Bow Street—

“For, that he had issued an illegal and oppressive proclamation of martial law, and caused divers illegal acts to be committed under the same; and for that he had unlawfully and oppressively caused the arrest, imprisonment, and flogging of divers persons by virtue of the said illegal proclamation.”

And Sir Robert Collier, who had been Solicitor-General under the Government of Lord Russell at the time the Act of Indemnity was sanctioned by the Crown, was

* The Act passed in the 42nd of George III., Chapter 85, which enacted in substance that if any governor of a colony or any military officer holding any office in a colony should be “guilty of any *crime, misdemeanour or offence*, in the exercise or execution of his office, or under colour of it, he shall be liable to be tried here in the Court of Queen’s Bench, the indictment to be found by a Grand Jury of Middlesex here; and if they find the indictment, the case to be tried by a jury of the county of Middlesex, exactly as if the offence had been committed in the county of Middlesex itself. As to the real scope of this Act see the Author’s “Commentaries on Martial Law,” and his “Review of the Authorities on the Repression of Riot and Rebellion,” and his Report of the Case of Mr. Eyre in the Queen’s Bench.

retained to conduct the prosecution, and accordingly appeared before the magistrates, and conducted it with all the weight which attached to his high position at the Bar.

The first reflection which naturally occurred to the minds of men was the apparent inconsistency of this course with the course taken, when he and Sir Roundell Palmer were law officers of the Crown. For it was to be presumed that they had *not* then advised that the ex-Governor could properly be made the object of any criminal prosecution, or it would have been their duty to have prosecuted him. And they had clearly given an opinion, upon which the Act of Indemnity had been *sanctioned by the Crown*, so that, as the Crown was actually a party to it, and it *included*, therefore, a pardon by the Crown,* and a pardon once given is a pardon everywhere, though *the Act* was a Jamaica Colonial Act, its effect and *operation* (if it were to have any effect or operation at all) plainly precluded any such prosecution. And, as the Crown was clearly a party to the Act of Indemnity, and is also a party to any criminal prosecution, the Crown was prosecuting in defiance of its own pardon, and in contravention of its own Act!

Nor was this all. As the Crown had, by the advice of its Ministers, acting on the opinion of its law officers (one of whom was Sir R. Collier), adopted and approved of the acts of the Governor in declaring and executing martial law, and in *keeping it in force* for the *whole* period of its operation ;

* An Act of Indemnity is in fact a pardon assented to by the Legislature. It is therefore, clearly a bar to a criminal proceeding anywhere within the dominions of the Crown ; and that, whether before or after conviction, for the absurdity of the Crown, pardoning in one part of its dominions and not in others, is too great to be arguable. And, hitherto, it has been taken as clear law, and is so laid down in the books of the highest authority—as “Story’s Conflict of Laws”—that a right of action discharged in the place where it arose is discharged everywhere, and that a legislative Act operating on the act out of which the cause of action arose can discharge the right of action appears too clear to be arguable. Certainly these propositions had never been doubted until the present case.

the prosecution which charged that the proclamation was "illegal and oppressive," was grossly inconsistent with the position already taken by the Government of Lord Russell, on the part of the Crown.

Nor was even this all. For as the Crown had ratified and adopted the Act of the Governor, its own officer, in declaring and executing martial law, the Crown *was actually prosecuting itself*; and declaring, by one of its own counsel, its own acts and conduct to have been illegal and oppressive! For one of the charges was for declaring and exercising martial law at all. Thus, to the numerous monstrous anomalies which the prosecution of this unhappy gentleman had elicited, this was to be added; that one of the counsel of the Crown, lately one of its law officers, came forward to prosecute one lately a servant of the Crown, for acts the Crown had adopted and approved of, and which he now denounced as illegal and oppressive. In other words, one of the law officers of the Government of Lord Russell came forward to conduct a prosecution, on the basis that acts of that Government—adopted and approved on their own advice—had been illegal and oppressive! For Sir R. Collier, in opening the case before the magistrate upon the original application for a summons, distinctly maintained and insisted that the proclamation which *had* been issued, or which he had advised the Crown to adopt and approve of, *was illegal*, and such as the Crown itself could not legally have issued.* And being asked by the magistrate, whether there was not in the island a legislative assembly competent to give that authority, he distinctly answered and maintained, that there was *not*.† But he insisted

* He did not explain in what other form a proclamation of martial law could have been issued. And the counsel for the prosecution admitted that it was in accordance with the ancient precedents of such proclamations as indeed it undoubtedly was. The old acts described martial law as proclaiming the Articles of War, and the proclamation simply proclaimed war against the rebels.

† This was distinctly contrary, as Mr. Justice Blackburn afterwards showed, to a

that the proclamation was not only illegal, but *necessarily criminal*, although in accordance with the terms of an Act assented to by the Crown, and although also in accordance with the unanimous advice of the Council, comprising the Chief Justice, the Attorney-General, the Commander-in-chief, and all the authorities of the colony—a position so monstrous, that it was afterwards distinctly so described* by a learned judge from the Bench, and it revolted the common-sense of all England.

Sir R. Collier tried hard to show that mere illegality necessarily amounted to *criminality*, even in a case of the most honest belief in an apparent authority; but, though he had evidently searched the books most narrowly, he found no authority to sustain such a proposition, as applied to the act of a civil ruler or other high officer of State acting in his public capacity. Still less did Sir R. Collier succeed in showing any authority to sustain the other part of his case, that the Governor was *criminally* liable for an error of judgment in keeping martial law too long in execution. But with the candour which belonged to his high position and character in the profession, he put it *only* as an error of judgment (although, undoubtedly, he represented it as a grave and culpable error); and it is hardly necessary to say that the coarse charges so long hurled at the unfortunate ex-Governor by his persistent assailants derived no support or countenance from the language of Sir R. Collier. He distinctly stated that he charged no intentional misconduct or bad motive against the ex-Governor; but insisted that his conduct had been so illegal and arbitrary as to involve grave culpability, and therefore illegality.

Of course, Sir R. Collier made great use of the charge

solemn decision of the Privy Council that the Legislative Assembly of a colony has within the colony full legislative authority, so that it be not against the provisions of any Imperial Parliament applying to the colony See the Queen v. Eyre.

* Mr. Justice Blackburn, in his charge.

of the Lord Chief Justice, and seemed to have imbibed from it the impression which it was certainly calculated to produce, and with which he succeeded in imbuing the worthy magistrate, that the Lord Chief Justice had pronounced against the legality of martial law, or, at all events, deemed it of such doubtful legality, that to act upon it, even with every possible amount of *apparent* authority and legality, was to incur actual *criminality*; a view so monstrous that it is a relief to be able to say that, as already has been shown, the Lord Chief Justice had shrunk from laying it down distinctly; and it will be seen, afterwards, in his observations upon the present case (after the charge of Mr. J. Blackburn laying down the contrary), distinctly repudiated it, and declared that a Governor honestly declaring martial law, under a local Act, would *not* be criminally liable for it.

There was, however, certainly much in his own charge which led to that conclusion; and at all events, it was in favour of this view, that the legality of martial law, being doubtful, it was proper, that in order to *determine* its legality, criminal proceedings should be permitted—a view, it is conceived, scarcely less erroneous than the other, and which also was ultimately repudiated. However, the magistrate, naturally enough, adopted it, and very soon indicated his intention to act upon it, and thus in this, as in every other proceeding against this unfortunate gentleman, the course taken against him was taken under the influence of manifest misconception as to the law. For it is obvious that if the law had been taken as it afterwards was admitted to be, then, as Sir R. Collier admitted that there was no conscious or intentional misconduct, it would have been palpable that there was no pretence for the prosecution. And it will be seen that Mr. Justice Blackburn afterwards designated as “monstrous,” the main ground on which it rested. Thus, therefore, the unhappy ex-Governor suffered all the misery

and humiliation of these vexatious prosecutions, merely because magistrates had been misled as to the law.

The magistrate, on this occasion, following the view which had been suggested by the Lord Chief Justice, seemed to think it his duty to convict if there was any doubt as to the legality of martial law. Even then, of course, Mr. Eyre would only be liable for acts directed by him, or, at the utmost, only for acts done in due course of execution of martial law ; unless it was so *obviously* illegal, there could be no due course of execution, and, so no *excess*, which was contrary to the view presented by the prosecution itself. But the magistrate actually appeared to adopt the view that Mr. Eyre was guilty of all the criminal acts done by others under martial law ! for he admitted evidence of a variety of acts of which it was not shown that he had ever had knowledge ! There was, indeed, some slight evidence offered, of authority, of his being in the town where executions were going on ; as if that implied his knowledge of the proceedings of courts-martial ! There were, however, several instances of persons whom he was proved to have ordered to be arrested out of the district, and taken into it, to be tried (if the evidence was sufficient), among which was that of Gordon, who was executed, no doubt with Mr. Eyre's approval ; and one Phillips, who was flogged. But there was no evidence of personal interference by Mr. Eyre in the trials, nor of any *personal* knowledge, on his part, of any excesses.

The prosecution was conducted upon the principle which had been avowed in a former prosecution by one of the learned counsel for the prosecution, who refused to admit an insurrection, and sought to throw upon the accused officers the whole onus of proving it, and of showing its extent and character. He said :—

“ It is true, it was proved, and it is notorious that *something*, which, in default of a better name, we may call an *outrage*, did take place at Morant

Bay ; but what was the extent of it, what were the circumstances of it, what degree of repression it required, what degree of violence it justified, are *matters which it will lie upon these gentlemen to give evidence of*, according to my view ; my friend is entitled to assume the existence of *some* disturbance which led to these measures ; but he assumes the foundation of the whole case if he assumes it was such as to necessitate and justify the course adopted."

And this, observe, although the prosecution well knew that the Royal Commissioners had reported that the declaration of martial law, and its execution for a considerable time, and its maintenance for the whole time, were fully justified, and although the Government had adopted that conclusion.

Notwithstanding this, and although the prosecution were in possession of a vast deal of evidence, much of which was legally admissible, to show the nature and extent of the rebellion, and its situation, and the formidable danger which existed, and the like, they declined to let in anything more of this than they could possibly avoid, and went upon the principle they had pursued in the former cases, of not proving what they deemed a *prima facie* case, and throwing upon the Governor the onus of proving all the circumstances of a well-known justification. And as they professed that their case was that martial law was illegal, though they knew it had been held by all the authorities to be legal, they confined themselves with merely proving the declaration of martial law, and the acts of execution or of punishment ! Nor was this all. For as they professed to believe that martial law was wholly illegal, and that the Governor, having declared martial law, was responsible for all that was done by anybody during martial law, they gave evidence of *any* acts of execution or punishment, without troubling themselves to show that Mr. Eyre ever knew of them ; still less had authorised them. It happened that in some instances he was in the town where they occurred ; and this they gave evidence of, as if it implied knowledge and authority,

although they well knew that the place was under military authority, and in military occupation. And all this evidence was actually received by the magistrate.

It may be convenient here to state the substance of the evidence, premising that, although the prosecutors desired, as above stated, to avoid entering into any matters which might tend to show the condition of the colony, or the existence of circumstances which might justify or excuse the exercise of martial law; yet, either in cross-examination, or by reason of the rule that if you put in part of a man's statement against him, you must take the whole: a great deal of evidence of that tendency necessarily got in.*

Stated generally, the case upon the evidence was this:—

“That an insurrection of negroes ‘the result’ (as the Commissioners stated) ‘of a planned resistance to lawful authority,’ broke out at Morant Bay (about forty miles from Spanish Town) on the 10th of October, 1865; that this outbreak was followed next day by a massacre of a considerable number of white inhabitants; that next day there was another murderous attack; and that there were symptoms of the insurrection spreading; that on the 13th the Governor, by the unanimous advice of the Council, and under a local statute expressly authorising it, proclaimed martial law, which, by the terms of the statute, would continue thirty days, but not more than thirty days, unless expressly continued, and that martial law was continued for that period, *i.e.*, until the 13th of November; that during that period military detachments were sent out under the command of officers, and that at the various places to which they went many negroes were either shot or hung, and many were flogged; that Mr. Eyre was at some of these places when the troops were there, and during the executions, though there was no evidence that he either directed or was present at any trial or execution, or any other punishment, and there was no evidence under whose orders the acts occurred, or under what circumstances, except that in most cases there were trials; nor did it appear whether or not the men were guilty, or the trials fair; that about the 20th of October he caused five persons, one of whom was Gordon, to be apprehended out of the declared district, and carried into the district, and that one of these persons, Gordon, was afterwards there tried by court-martial, convicted, and executed, with Mr. Eyre's approval, though there was no evidence that it was by his authority; and that two other of these persons

* See the Report of the Case of the Queen v. Eyre, published by the Author.

(Phillips and Morris) were flogged, and that several atrocities were committed; but it did not appear that it was even with Mr. Eyre's knowledge, still less concurrence; that after the 24th there was no actual outbreak; that on the 30th of October he issued a proclamation of amnesty, in which he stated that the 'rebellion in the district where it broke out was subdued;' and that on the 2nd November he wrote to the Secretary of State to the like effect, adding, however, that the state of other parts of the colony continued to give him great anxiety, and that rebellion was ready to break out on any opportunity; that during this period he was beset by urgent applications from various parts of the island, expressing the utmost alarm and apprehension, and praying for military force, which he was unable to send; that military reinforcements did not arrive until the end of the month, and that then a difference of opinion arose between him and the Commander-in-chief as to the mode of their distribution, Mr. Eyre earnestly suggesting their distribution through this land for the purpose of protection, the Commander-in-chief protesting against this, and preferring concentration. Ultimately, as already mentioned, martial law terminated on the 14th November, and an Act of Indemnity was passed and approved by the Queen (after inquiry by Royal Commission), which, without any restriction in its terms to prosecution in Jamaica, expressly applied to any prosecution in the name of the Crown."

But it is necessary, or may be of interest, to afford a more full analysis of the evidence adduced in the case; and, in the first instance, it may be convenient to introduce some general facts given in evidence with regard to the condition and circumstances of the island and the declared district, giving after each statement the name of the witness who made it:—

"Jamaica, it was stated, is only a day's sail from Hayti, a negro state (Viner), and it has a population (by the last census) of 400,000 blacks, and 13,000 whites, scattered through the island. The witness thought the whites were more numerous, but could not say the census was not correct. It appeared that the black population being employed in the cultivation of the sugar-cane, use for that purpose implements called cane knives, but which are (as described by the witnesses) in reality like cutlasses, and three feet long. One witness said, 'A sugar-cane knife is about three feet long, and very heavy.' (Rea.) And again, a cane knife was described as the 'length of a cutlass.' (Rea.) Evidence put in as to the rebellion, it will be seen, described large bodies of negroes as 'armed with cutlasses.' (Min. of Ev., p.p. 981-996.) It further appeared that Jamaica is very mountainous, that the roads are generally in the tracks of the rivers, which, in the rainy season are flooded; and this was in the

rainy season. The rivers were much swollen, and this made communication more difficult." (Ev. of Mr. Eyre, Min. of Ev. before the Royal Commission, and also deposition of Rea.)

It further appeared that *two months before the outbreak* an insurrection had been apprehended to take place *on the 1st August*, and was only prevented by prompt measures; and that *at that time*, and *from that time*, Gordon, who had been executed as the author of the rebellion, was in constant communication with the active leaders of the insurgents, and, with their aid, circulating an inflammatory address, originally issued for a meeting for the *last day of July*, and afterwards kept in circulation:—

"On the 24th of July the Governor wrote to the Secretary of State transmitting a communication from the Custos of St. Elizabeth, enclosing documents representing that there was an apprehension that riot or rebellion would break out in some of the parishes at the commencement of August (the anniversary of freedom) on the ground of unjust taxation. 'Every effort' (wrote Mr. Eyre) 'will be made to prepare for and guard against the contingency suggested; nor do I myself anticipate any serious outbreak.'

"The Custos of St. Elizabeth, however, on the 28th of July, wrote to the Governor in these terms:—

"'From all I can gather there is no doubt that an insurrection to rob and burn was decided on, and that strong and severe measures will be necessary. The general opinion among proprietors—white, coloured, and black—is that all the disturbance and ill-feeling is to be attributed to the late assertions that the negroes are cheated and ill-treated, and that if permitted to be reiterated there will be no security for life or property.' And the proceedings on the trial of Gordon were put in evidence, and there it appeared that 'for some time past Mr. Gordon had been carrying on a regular correspondence with the leaders in the subsequent rebellion, and circulating a printed paper to the blacks, the heading of it was, "To the People of St. Thomas-in-the-East and St. Anne's." It called upon the people "*to be up and doing.*"' (Minutes of Evidence, p. 620.)

"Until these rumours began to circulate, there seemed no reason whatever to suspect that the labouring population was otherwise than peaceably disposed. (Ibid.) On the 5th of August the same gentleman wrote to the like effect:—"It is still rumoured that there is to be resistance in some shape to the payment of taxes, but as yet it is but rumour. No doubt the high price of all classes of provisions has been of late severely felt. I have never known every description of food to be at such high prices all at the same time. At such a time, as is well known, the poorer classes are far more easily excited to feelings of discontent, and at

such a time much mischief may be done by a few evil-disposed mischievous persons.' (Ibid.)

"Then it appeared that there were in a paper published by friends of Gordon, articles in September, 1865, the effect of which was to suggest that if the taxation was kept up the people would be goaded to desperation. (Minutes of Evidence, p. 986.) And Mr. Eyre, in his examination, put in a letter from the editor of the same paper (one Levien, who was one of those ordered by him to be arrested), stating that he was acting editorially for the purpose of screening Dr. Bruce (another of those he arrested) 'and others from the charge of anarchy and tumult which must necessarily follow from the very strong demonstrations which have been made,' alluding to meetings which had been held. (Minutes of Evidence, p. 89.) Such was the evidence as to the state of the colony up to the middle of September, 1865.

"No actual outbreak occurred until the 7th October, when it took place as described in the evidence."

Thus, therefore, it appeared in evidence that the rebellion had been caused by agencies which had been long at work, and that it was the result of *intentional incitements* by Gordon and his associates. It appeared further—

"The earliest intimation Mr. Eyre received of the disturbances was in this letter from the custos :—

"I am sorry to say that Mr. G. W. Gordon's inflammatory addresses have borne fruit earlier than I had anticipated. On my arrival here I found the respectable people in a great state of alarm and excitement, in consequence of demonstrations of disaffection and open violence by a body of men who came down to the Court-house armed with bludgeons. The ringleader in this affair is a man of the name of Bogle, who generally acts with Mr. G. W. Gordon.' (Minutes of Evidence, pp. 1003-4.)

"On the 11th of October, 1865, Mr. Eyre received intelligence of the massacre at Morant Bay, in which twenty-eight persons were murdered and the Court-house burnt, and further that the insurgents were going on. (Minutes of Evidence, p. 84.) The outbreak occurred at 3 o'clock on the afternoon of the 11th of October, and Mr. Eyre stated that on the 12th of October several communications reached him notifying that the negroes had fulfilled their expressed intention of going down to the Bay on the 11th; that they had risen in insurrection and had killed the custos, several of the magistrates, the inspector of police, the commanding officer of the volunteers, and others, had released the prisoners from gaol, and had burnt down the Court-house. It was further (he said) reported that the *insurgents intended to proceed with their work of devastation up the line of Blue Mountain valley.* On the evening of the same day Mr. Eyre stated he had an interview with a magistrate who lived some eight

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miles from Morant Bay, and who had just made his escape from the district in insurrection and reported that the same morning a party of negroes armed with cutlasses and sticks, had entered his house and threatened to kill him and another gentleman who was at the house, and all white or coloured persons, and that while escaping he saw about 1,000 people armed with cutlasses and sticks, with flags flying, drums beating, and horns blowing, all going towards Morant Bay; and subsequently saw other parties similarly armed. These facts, Mr. Eyre stated, were reported to him on the evening of the 12th, and with these facts before him, and remembering also that about two months before he had been compelled to send ships of war and take other steps to prevent anticipated risings in another part of the island, and aware that disaffection and agitation had sedulously been stirred up throughout the entire colony, and knowing well the character of the black population, and their proneness to act upon impulse and follow examples, he could have no doubt (he said) 'that a very serious rebellion had broken out, and that it was his duty to proclaim martial law as the only means of meeting so grave an emergency.' (Answer of Mr. Eyre to question 46,578, Minutes of Evidence before the Royal Commissioners, p. 920.) Early on the 13th of October the Council of War assembled, and under the statutory law of the colony agreed to proclaim martial law, there being present, with the Governor, the Commander-in-chief, the Chief Justice, the Attorney-General, and the leading magistrates and members of the House of Assembly, all of whom were unanimous for martial law. On the 13th, with the assent and advice of the Council, the Governor declared martial law under a local Act, which authorised it. The proclamation declared, 'That martial law should prevail throughout the county of Surrey, except Kingston, and that the military forces should have the power of exercising the rights of belligerents against such of the inhabitants as the military might consider opposed to the Government.' (Evidence, p. 83.)

"It did not appear that Mr. Eyre took any part in directing the execution of martial law, which he left to the military commander, though of course he knew prisoners were tried by court-martial and executed. (Evidence, p. 86.) Parties of military had meanwhile been sent out in different directions. It was proved by several of the witnesses for the prosecution, that prisoners were taken who were not actually found in arms (though, as to some of these, it appeared that it was stated that they had the sugar-cane cutters—a weapon three feet long and like a cutlass), and that they were shot; but it did not appear that Mr. Eyre had even known of these acts until afterwards."

On these occasions, of course, the Governor was not present, and it was sought to render him responsible by reason of subsequent or precedent sanction. As to precedent sanction, it was proved by one of the witnesses

for the prosecution (Rea) that the Governor told the military "to do their duty," and in a document put in evidence, a memorandum of his instructions to General Nelson, the military commander, he said,—“The country should be scoured, and those in arms against the Queen be cut off or captured.” This was all that was proved in the way of personal direction or sanction from Mr. Eyre, and it was not sought to make him liable even by reason of reports to him from the officers; for, in point of fact, they did not report to him, but to the Commander-in-chief; and Mr. Eyre stated in his evidence—

“That the reports he received were comparatively brief, that the officers never reported to him, but to the Commander-in-chief, and that, therefore, when he was in the neighbourhood, these reports were shown to him, yet that, as to a considerable number of them, he only received copies just in time to send to the Secretary of State, and that as to many he had never seen them. (Evidence, p. 87.) He directed, he said, the movements of the troops while he was with them, but with the subsequent details he had nothing to do—that was left entirely to the military powers. He gave no directions whatever (beyond what has been stated), understanding that during martial law the supreme power was vested in the military authorities. (Evidence, p. 87.) It appeared, however, that on the 18th of October Mr. Eyre gave a memorandum of direction to General Nelson to send out detachments to drive in, cut off, or capture the rebels.

“These, Mr. Eyre stated, were the instructions he gave to General Nelson, and which were carried out.”

This was all the evidence of personal responsibility as to the acts of the military, to whom it did not appear that the Governor had given a single order.

The more particular facts stated in evidence on the part of the prosecution were the following, and it will be observed how little of it in the least degree affected the Governor. First, as regarded the most important head of the charge—capital punishments:—

“Mr. Eyre was at Morant Bay for several days after martial law was declared. It did not appear that he was there during Gordon's trial, which was on the 22nd of October. Mr. Eyre was at Morant Bay on the occasion of some of the executions; not on the ground, but merely in

the town. (Lake.) During this period the town was in the occupation of the naval and military forces, and (it need hardly be added), there was no outbreak. Mr. Eyre was there part of the time. There was no evidence, however, that Mr. Eyre had directed the trials or executions, or by whom they were directed, nor (except in the case of Gordon) that he knew what the evidence was, nor whether the parties were or were not guilty, or were or were not fairly tried. It was proved by another witness that on the 15th of October Mr. Eyre went to Port Antonio, and remained there next day. Several men were hanged there that day. (Marsh.) He went next day to Port Morant. It did not appear whether he went back to Port Antonio, and was thus going backwards and forwards. Thirteen men were seen hanging at Port Antonio, but it did not appear that Mr. Eyre saw them. (Marsh.)

“With regard to the acts of soldiers in the field, it was proved that on the 13th of October Mr. Eyre went into a tent full of seamen and marines and read the proclamation of martial law to them, and said he ‘hoped they would do their duty.’ (Rea.) Next morning a party went to Easington (which is about eighteen miles from Morant Bay) under the command of Lieutenant Oxley, their orders being (it did not appear by whom given) ‘to shoot down any one whom they saw running away.’ (Rea.) These orders were obeyed in three cases on the road. The men in these cases had no arms, but in one case one of the prisoners had been seen in the market-place with a sugar-cane knife the length of a cutlass, ‘brandishing it about and trying to get the people to rebel.’ On the road the party took fifty prisoners, but met with no resistance, and at Easington found no disturbance. (Rea.) They, however, took precautions; they loop-holed every window and shutter in the Court-house, and stationed men at each window and door. (Rea.) One man who had been condemned to die was executed, one was flogged, and two were let off. (Rea.) The party stayed several days at Easington, and took back many prisoners to Morant Bay. The party afterwards went to Stoney Gut (Bogle’s settlement), which they found deserted (though a woman fired a pistol at them), and they pulled down about fifty houses, &c. Female dresses and glass and china were found there, which they were told came from Morant Bay (Rea), and which were evidently above the condition of the persons who lived at Stoney Gut. ‘It is a formidable place; rather inaccessible; artillery could not be got there, and the soldiers had to go in single file. It would be a formidable position for an enemy to hold, as it commanded the road to Kingston, and the bush surrounded it. The country was not easy to traverse, as it was so full of bush and wood.’ (Rea.—‘If a person got into the bush it would be difficult to catch him.’) (Rea.—‘It was very rainy at this time, and the rivers much swollen, and that made keeping communication open much more difficult.’) (Rea.) Such was the substance of the evidence as regarded acts of homicide, either executions by order of courts-martial or summary military executions on the field

without trial, with the exception of two cases, as to which particular evidence was given, those of Marshall and of Gordon. The first, Marshall, was executed on the 18th, after being flogged, by order of the Provost-marshal, but it did not appear that Mr. Eyre was aware of it or approved it. So as to most of the cases of execution. On none of the occasions was Mr. Eyre proved to have been present. It was sought, therefore, to affect him by evidence as to occasions when he was in the neighbourhood, though there was, it will be seen, no evidence of his personal presence at any of the trials or executions, or of his actual approval of any, except Gordon's, which he avowed. The case of Gordon occurred between the 17th and 24th of October. That is to say, Gordon was arrested on the 17th, tried on the 21st, and executed on the 23rd of October, Bogle being still at large."

Such was the general evidence for the prosecution on the most important part of the case—capital executions. It came to this, that martial law had been declared, and that Mr. Eyre knew that rebels were tried and executed, but that he left that to the military commander.

Then, as to another head of charge, the infliction of the punishment of flogging, the evidence was this:—

"It was stated by one witness that on the 18th thirty-three men were flogged at Morant Bay; but he also stated that they were all tried. (Lake.) This was during the first days of martial law; but the principal evidence under this head of charge was that of a witness named Phillips, who had himself been flogged; and who had, with Gordon and Leven and Bruce, been arrested out of the declared district. He stated that he was a native of Jamaica, who resided at Vere (forty miles from the declared district), and that he was arrested on the 24th of October by Lieutenant Sinclair, who said he was authorised by the Governor to arrest him and search his house, and seize on his papers. He and Dr. Bruce were taken handcuffed to the King's House, at Spanish Town, where Mr. Eyre was. He saw them, and they were then handcuffed, and he ordered them to be taken to the volunteer station. They were then taken to Uppark Camp, within the declared district, and thence to Morant Bay. No charge was made against him (Phillips) and he did not ask what was his offence. He was released on the 4th of November, but was first flogged by order of Lieutenant Adecock. (It did not appear that Mr. Eyre was there.) He received 100 lashes. (Phillips.) He said he never was tried, nor told why he was arrested. He was afterwards tried by the Special Commission for conspiracy, but was acquitted. This person has brought an action against Mr. Eyre, which is now pending in this court, and in which the Bill of Indemnity is pleaded, which will raise an important question whether the Bill is a bar to a proceeding in this country."

Then as to another head of charge, the arrest of parties out of the district, ordered by Mr. Eyre :—

“It was proved that Dr. Bruce, a white man, a medical practitioner, who resided at Vere, and Mr. Levien, proprietor and editor of the *County Union* newspaper, who resided at Montego Bay, were arrested and brought to Morant Bay. Their residences were out of the declared district, but then it also appeared on the evidence that, at all events, Bruce and Levien had been arrested (as Gordon had been) *for acts done, or caused to be done, in the district*, for it appeared that Levien had written to Bruce, that he was engaged in writing editorials to screen Bruce and others from the charge of anarchy, and the result which must necessarily result from the very strong demonstrations which were being made. (Evidence of Eyre, p. 89.) Levien, Bruce, and the witness Phillips (who also had been arrested), were afterwards liberated, and prosecuted before the ordinary courts, after martial law was over. Bills were found against Bruce and Phillips, but they were acquitted, and Levien was convicted. (Lake.)”

One main head of charge was for the continuance of martial law longer than necessary; and, as to this, Mr. Eyre’s statement was :—

“At the time these arrests were made, there were only 1,000 troops in the colony altogether, 500 of which were kept in the disturbed district, and could not be removed; the other 500 were engaged in defending Kingston and other places, and there were apprehensions (he said) of disturbances arising not only there, but elsewhere, and in almost every part of the island the whole island was considered in the most imminent danger. There was not a single soldier who could be detached to any one district, if any further outbreak had occurred (which was considered imminent), and on that conviction he considered himself justified in taking the most prompt and summary measures. (Evidence, p. 90.)”

“The island, it appeared, is divided into three counties, over one of which, Surrey, the declaration of martial law extended, chiefly comprising the extensive parish of St. Thomas-in-the-East, where the disturbances broke out. Mr. Eyre, in his statements, said that the troops, small as they were in number, occupied a tract of country containing from 700 to 800 square miles, and he also, in accordance with what the other witnesses stated, said ‘the country was a very difficult, mountainous country, and it was a very unfavourable, wet season of the year—in fact, the rainy season—which (he said) will give an idea of the difficulty of working the country, and getting under an outbreak if it

took place, and therefore the necessity of preventing its occurring in any other district.' (Evidence, p. 90.)

"On the 24th of October a steamer was seized with 100 kegs of gunpowder and arms on board. (Marsh.) This was the day Mr. Eyre landed at Port Antonio. (Marsh.) The same witness, however, stated that there was a 'General La Motte' on board the vessel seized, with some Haytians, a crew of some nine or ten men, besides the 'General,' with arms and ammunition; and they were taken and put on board the guardship. (Marsh.) And though there was no outbreak at Morant Bay (the troops being there) there was an American bark full of white refugees from other places. (Marsh.) Hayti, it was mentioned, is only a day's sail from Jamaica (Vinen), and it need hardly be added that it is a negro state.

"On the 19th of October, there was a letter from a leading magistrate and member of Assembly (Mr. Hosack) to the Governor, dated Kingston, October 19th, stating that three persons had been taken into custody, and that he was of opinion that the Haytians should also have been taken into custody and deported, as 'a great rebellion was going on in Hayti, and rebellion is a hydra-headed monster, on which heads often grow as fast as they are cut off.' This letter stated that 'Kingston was quiet and well guarded, and that the promptness of the Governor and the troops was rapidly restoring confidence, but that Kingston was still the point to which families were flying from all parts.' (Minutes of Evidence before the Commissioners, p. 992.)"

And there were a series of letters to Mr. Eyre similar in their tenor to those already copiously abstracted in his statement to the Secretary of State. These, however, were of a more important nature, being all more or less in the nature of *official* communications from magistrates and other public functionaries, and they formed the main materials for judgment which Mr. Eyre had, as to the continuance of martial law, *until the reinforcements were distributed.*

"There was a letter from the Custos of Westmoreland to the Government Secretary, dated the 23rd of October (the date of the execution of Gordon), 'as regards the necessity for precautionary measures being adopted to guard against any serious riots at the Circuit Court.' That letter, and one referred to in it, states that on the 20th, after consulting with the magistrates at Savanna-la-Mer, it was determined, on account of the serious rumours from the Bluefields district, and the state of alarm in which the town was placed, to assemble the Volunteers, and thus 'bring matters to a crisis' before the alleged rioters obtained strength. On the 23rd of October, there was a letter to the Governor from a magistrate,

enclosing a communication urgently asking for assistance ; and stating, 'that the people about me are in a very excited state ; but I have no fear of their rising, so long as they are left to themselves. However, as G. W. Gordon often lives here and has a large Baptist's chapel about three miles from my house, where he has lately been holding forth in his usual strain, I shall not feel at ease until all is quiet.' (Minutes of Evidence, p. 994.) The letter to the Governor enclosing this stated :— 'The district is a stronghold of Mr. Gordon's, densely populated by a disorderly set of vagabonds ; and he (the writer of the enclosed letter) may be in more danger than he thinks. I have written to him to say that, should there be an outbreak, his efforts for protection would be useless ; and that if he feels himself in danger he should immediately bring his family down to Spanish Town. I would suggest that, as the district is the only one where strong excitement exists in relation to Mr. Gordon, *whether fifty or sixty white troops should not be immediately located there before an insurrection should arise.*' (Minutes of Evidence, p. 994.) This was on the 23rd October (the day of Gordon's execution).

"Another letter ran thus :—'The dreadful atrocities perpetrated in St. Thomas-in-the-East induce me to address you, requesting that you will bring to the Governor's notice the unprotected state of this district, in the event of any outbreak among the people ; there not being any organised body in existence, the volunteers have resigned some time ago, &c. . . . I may as well mention that Mr. G. W. Gordon visited this district about two months ago, and I am credibly informed that he, in addressing a meeting in a church used such seditious language that the pastor had to stop him. He then left, and went to his property about three miles from the place, and there is no telling what amount of sedition he spread there.' (Minutes of Evidence, p. 995.)"

It was upon such communications as these Mr. Eyre stated as to Gordon's execution—

"That it was by his directions Gordon was apprehended. That at the time he gave directions for him to be apprehended, he had heard—in the disturbed district, from every quarter, and had reason to believe, from various little facts and circumstances (such as his issuing seditious placards under the plea of advising the people, and his being intimately connected with all the chief rebels, and various other facts of that kind) that he had been the prime mover of the outbreak ; and he found the same opinion was universally entertained in Kingston. Among other things, he was informed that some of the rebels had stated that he was the cause of their being brought to the gallows. He had reason, he said, to believe that it was his acts and his language which had led to the rebellion. 'That is to say,' interposed the Commissioners, 'had excited it.' (Examination of Mr. Eyre, Memorandum of Evidence, p. 88, 89.) Pressed by them as to any information tending to show that he was 'the instigator of this *particular* outbreak'—

[This was a distinct betrayal of the fallacy which had misled the Commissioners throughout, and which operated so fatally to the prejudice of Mr. Eyre—the *fallacy* that it was necessary, in order to justify Gordon's execution, to prove that he contemplated *this particular* outbreak! As if it mattered a straw whether he intended it to be on one day or another, provided he intended insurrection; or as if it could be a matter of doubt that he intended it, when he had used language naturally calculated to excite *negroes* to insurrection, in a colony where they formed an enormous and overwhelming majority—a colony a few hours' sail from Hayti, and in which he had told them to be "up and doing," and to do "as they had done in Hayti," &c. It is almost incredible, and but for the history of the unfortunate agitation, it would be utterly unaccountable, how any lawyer could have been betrayed into such a fallacy! Nothing but the prodigious and unprecedented excitement could account for it. The unhappy Governor, of course, could only appeal to the plain meaning of the words the man had used, and to their *natural tendency—the then state of the colony.*]

Mr. Eyre answered 'that he had circulated numerous placards, mentioning by name those individuals who were subsequently murdered, whom he held up to odium.' (Ibid.) He particularly referred to the address headed 'The State of the Island,' originally issued on the 29th July, as already mentioned, but which Mr. Eyre stated he had since ascertained had been circulated by Gordon (Ibid.), and copies of which were found in the post-office just after the time of the outbreak. (Evidence on Gordon's trial, Minutes of Evidence, vide Nelson's evidence.) Such was the evidence as to Mr. Eyre's act in directing the arrest of Gordon. The next evidence on this head was as to the trial; the Minutes of Evidence were put in (Minutes of Evidence, p. 617), whence it appears that the trial was on the 21st of October, at Morant Bay, on a charge that he had excited the insurgents, and by his conference with them tended to cause the rebellion, riot, or insurrection of the 11th of October, and it appeared that on the trial one Anderson swore that he heard Gordon say at Stoney Gut to Bogle (the active leader in the massacre), 'We must get up some men for to go to Morant Bay to seek about the back lands, and if we don't get the back lands all the buckra, *i.e.*,—the whites, they will be die,—*i.e.*, all

be killed.' And the address of Gordon, headed 'The State of the Island,' seized at the post-office at Morant Bay on the 11th of October, was put in, containing these words, 'We advise you to be up and doing,' &c., and particularly naming the principal persons massacred, Kettleholdt and others. And the post-mistress at Morant Bay, one of the witnesses, stated that Gordon had corresponded with Bogle, and that she had received a packet of printed papers addressed to Bogle in Gordon's handwriting, shortly after the publication of the Queen's advice, and that she had read one of the printed papers addressed to Bogle, and she had it in the post-office at the time of the outbreak, and it was headed, 'To the people of St. Thomas-in-the-East,' and called upon the people to be 'up and doing.' (Minutes of Evidence, p. 640.) As regards the evidence in the case, of which these appear to form the principal points, it is not necessary here to say more. It appeared from the minutes of the trial (put in evidence) that the court-martial assembled 'by order of General Nelson,' and that the General 'approved and confirmed.' Moreover, it also appeared that he reported the proceedings not to the Governor, but to the Commander-in-chief; and that the latter having sent the proceedings to the Governor, the latter returned them with these words:—'I have duly seen the proceedings of the Court, and fully concur in the justice of the sentence, and also in the policy of carrying it into effect.' (Minutes of Evidence, p. 91.) But it was stated also by Mr. Eyre in his examination, which was put in evidence, and also appeared from a letter of his, which likewise formed part of the evidence in the present proceedings, that before sentence was carried out, the proceedings were remitted to the Commander-in-chief of the colony, having been in fact first received by him, and approved by him before being sent to the Governor. (Minutes of Evidence, p. 1017-18.)"

Such was the evidence as to Gordon's arrest, trial, and execution, Mr. Eyre's allowing of which formed one of the main heads of charge. Then as to the necessity for it, arguing from the general state of the colony, there was this further evidence:—

"On the 23rd inst. he received a letter from Westmoreland parish as to anticipated disturbances at the approaching circuit court. 'With the present jury system,' said the writer, 'whatever may be the evidence, it is anticipated that an acquittal will be the result, upon which it is not unlikely that a popular outbreak will be the result.' Upon which Mr. Eyre endorsed a minute that the civil executive would be prepared to meet whatever emergency arose. (Minutes of Evidence, p. 996.) On the same day the senior magistrate of Hanover parish wrote a long letter stating that there is good reason for knowing that a spirit of disaffection exists among the lower orders, and that there is no knowing how soon or how

fatally it may be roused into action.' (Ibid.) 'If such an event were to occur, it would find us perfectly unprepared and entirely helpless. There is not (irrespective of the police) a stand of arms in the place, and no ammunition (except the little in the stores of persons who deal in it), and there can be little doubt that at present the town, with lives and valuable property therein, would become an easy prey to a mob of far inferior strength to that so suddenly collected at Morant Bay.' On the 25th of October, Lieutenant Irvine wrote from Port Antonio to inform the Governor that on the previous day a schooner was seized—having on board 100 kegs of gunpowder and five Haytian passengers (General La Motte and others)—for not giving a satisfactory explanation for being here when she cleared out from Kingston on the 9th. Firearms were found on board, which were loaded. (Minutes of Evidence, 997.) On the same day a gentleman wrote from Montego Bay, conveying alarm as to an outbreak, and stating—'The Volunteers and special constables would scarcely be able to effect much against a thousand armed and infuriated savages. The chief part from among a people proverbial, from the large admixture of the African elements, for turbulence and ferocity.' (Minutes of Evidence, p. 998.) And the Clerk of the Peace wrote,—'In the event of the disturbance here the authorities are (if I except such aid as a handful of volunteers could give) absolutely powerless.' (Ibid.) Next day the Governor wrote to the Commander-in-Chief to send troops to Savannah-la-Mer. On the 27th October a justice of the peace for Metcalfe wrote from Annotto Bay—'There are several cases of cutting and wounding, and other offences, brought to my notice, and the civil power cannot deal with them at present.' (Minutes of Evidence, p. 1000.) 'There is reason to suspect that a spirit of disaffection prevails in St. Mary's, although I believe there have been no overt instances to indicate it. Several persons have been brought up charged with seditious conduct. One man by sentence of court-martial received 50 lashes, and another will be forwarded to Buff Bay, to be dealt with by the military authorities there.' (Minutes of Evidence, p. 1000.) 'On the 30th of October the senior magistrate of Hanover wrote again in pressing terms, enclosing a letter picked up, threatening to burn down the town, and stating that a war would break out and that all the people in the interior were ready.' (Minutes of Evidence, p. 1002.) And on the 31st the Hon. S. Rennall wrote to say that 'a local preacher there was implicated in the rebellion, and that until his apprehension every class of the inhabitants were apparently not secure that the rebellion would not extend to their district; there was, then, no certainty that it would not do so.' (Minutes of Evidence, p. 1004.) These communications were admitted in evidence to show the condition of the island about the 30th, the date of the declaration of amnesty, before stating which it is necessary also to mention a correspondence which passed about this time between the Governor and the Commander-in-Chief as to the distribution of the military reinforcements which had just arrived. The Governor, who, it will be

seen, was beset with applications for troops and alarms and apprehensions of renewed outbreaks of insurrection, wanted the reinforcements to be disposed of by distribution through the chief districts, and on the 27th of October wrote to the Commander-in-chief to that effect, thinking the reinforcements had arrived, which, however, turned out to be an error, they not arriving until the end of the month, when he wrote again to the like effect. Mr. Eyre stated in these letters :—‘ We have abundant proof that the same spirit of disaffection and disloyalty which led to the rebellion in St. Thomas-in-the-East exists to a considerable extent in every parish in the island ; and in a country so extensive as Jamaica, and affording so few facilities for receiving early intelligence or for making rapid movements by land, it is absolutely essential that for some time to come a considerable number of points should be occupied as military positions around the coast. (Minutes of Evidence, p. 1000.) And again he wrote that advices had reached him from the Custos of St. Anne’s which led him to believe that the spirit of disloyalty and sedition were rampant there, that the most threatening language was openly indulged in, and that there was an intention to rise in insurrection about the 2nd of November next, unless timely measures were taken to prevent it. (Minutes of Evidence, p. 1001.) On the 28th of October, however, the Commander-in-chief wrote to the Governor that he was unable to furnish any detachments from the newly-armed force, and that he greatly feared that the health of the troops would suffer if not in a measure relieved from the arduous work of the last two or three weeks. (Ibid., p. 1001.) And next day the Commander-in-chief wrote to say that although fresh reinforcements had arrived, he thought it best to concentrate them at head-quarters at Falmouth, instead of breaking them up into detachments, as Mr. Eyre had desired. (Ibid.) The same day the Governor wrote urgently to the Commander-in-chief to desire him to carry out that arrangement. (Ibid. p. 1002.)”

At this point it was that the Commissioners and the Secretary of State had thought that the actual exercise of martial law ought to have terminated—that is, on the 30th October, when the reinforcements arrived. But Mr. Eyre and the Commander-in-chief were of opinion that it was necessary to maintain martial law until the reinforcements were *distributed*, and as to the *distribution*, they could not agree for some time. On the 30th October the proclamation of amnesty was issued, and it recited :—

“That through the energy and zeal of our civil, military, and naval forces, the wicked rebellion lately existing in certain parts of the county of Surrey has been subdued and that the chief instigators thereof and actors

therein have been visited with the punishment due to their heinous offences ; and whereas we are certified that the inhabitants of the district lately in rebellion are desirous to return to their allegiance.

“And it then proceeded to proclaim a pardon to all who should at once come in and submit themselves to the Royal authority, except those guilty of arson and murder. (Minutes of Evidence, p. 87).”

It was upon this the prosecution chiefly relied ; as showing that martial law had ceased to be necessary : and as to this Mr. Eyre’s statement was as follows :—

“Mr. Eyre, in his first examination (put in evidence), thus briefly stated his reasons for continuing martial law for nearly a fortnight afterwards :—‘Because there were still a large number of rebels in custody who had not been dealt with, and because there were apprehensions of serious disturbances in other districts ; and it was considered necessary that summary punishments should take place with regard to those in custody and those who should be captured not coming in under the amnesty, before the 13th of November, when the period for which martial law was declared would terminate. (Minutes of Evidence, p. 88.) And he stated that he received communications at this time from almost every part of the island showing that there were apprehensions of risings. (Ibid.) They were, he said, very numerous, and disclosing a number of little facts, circumstances, and incidents tending to show a seditious spirit and a desire to join a rebellion if an opportunity offered—all indicatory that the country was in a very unsettled state and in a very precarious position. (Ibid.) A vast number of these he afterwards put in, and many were admitted by the magistrate in evidence. Mr. Eyre said on this point in his third examination, ‘The Commissioners are aware of the steps taken after the proclamation of martial law, that those steps were successful, and that I found myself in a position to proclaim, on the 30th of October, a general amnesty to all persons in the district where the rebellion had existed, excepting only certain persons who were specially excluded. The object of the Government in proclaiming an amnesty thus early was to offer an opportunity to those who had been in rebellion, but who had not been guilty of the serious crimes of murder and arson, to return to their allegiance. It was not intended to stop the operation of martial law, which would, without any further action on the part of the Government, continue to the 13th of November by the law under which it had been called into existence. The Government did not consider the disturbed districts in a state to admit of martial law being suddenly dispensed with, while the reports received from all parts of the island occasioned such great anxiety for the safety of other districts which were then unprotected as to make it a matter of essential policy to continue martial law until the Government could complete such arrangements as would justify a reasonable hope that

the public peace and the safety of life and property would not further be seriously endangered. (Minutes of Evidence, p. 991.) Mr. Eyre then proceeded to 'state the circumstances brought to the notice of the Government.' On the 2nd of November Mr. Eyre wrote to the Secretary of State a despatch, in which he reported that he had deemed it expedient to proclaim an amnesty, and proceeded thus—

“‘This step will, I have no doubt, lead to the immediate restoration of most of the plunder taken from the houses sacked by the rebels, and to the return of the peasantry to labour on the estates. The districts lately in open rebellion I consider, therefore, now perfectly quieted and safe; indeed, far safer than any other part of the island. The retribution has been so prompt and terrible that it is never likely to be forgotten. The accounts from other parts of the island continue to cause me much anxiety. No actual outbreak has taken place, and I hope none will, but it is manifest that the seeds of sedition and rebellion have been sown broadcast throughout the land; and that in every parish there are many prepared, if a fitting opportunity offered, to act just as the negroes did in the eastern parishes. In many parts of the country a sympathy with the eastern rebels, and expressions of a desire or intention to do the same in their own parishes, have been publicly indulged in, while the local authorities, from the absence of any organised force to resist a rising, have not been in a position to take up and punish such disloyal language and threats. Since the arrival of troops from Barbadoes I have been enabled to direct such a disposition of the troops as will, if carried out by the military authorities, enable the Executive to keep under control and check nearly every parish in the island; and if it is not practicable in all cases to prevent a rising, we shall be in a position to put it down without much difficulty, as well as to prevent its rapid extension to other parishes, as occurred in St. Thomas-in-the-East. There can be no doubt that there has been an inter-communication between the negroes of the different parishes; and an intention to act in concert for the destruction of the white and coloured inhabitants, as is proved by the many remarks and speeches which have reached us in all directions, some of them intimating a knowledge that something was about to occur at St. Thomas-in-the-East, and that they were waiting in other parishes to be guided by the action taken there. There does not appear, however, to have been any actually organised combination to act simultaneously, or if there was it was frustrated by the rising taking place prematurely at Morant Bay. I believe that the military arrangements stated in my letters to General O'Connor (*vide ante*) will render the island secure and restore public confidence.’ (Minutes of Evidence, p. 1006.)

“It did not appear, however, that these military arrangements were carried out before the 10th of November, and on the 13th of November martial law terminated.”

That is to say, martial law terminated within a day or

two after the reinforcements had been *distributed*, both he and the Commander-in-chief being of opinion that it was not until then martial law could be safely dispensed with.

It is to be observed that in every measure he acted in accordance with the opinion of the Commander-in-chief, except, indeed, in not continuing or extending martial law so long as he thought necessary.

Such was the substance of the case, as it appeared upon the evidence for the prosecution, comprising, indeed, the case on the other side, so far as it could be imperfectly elicited or introduced: which consisted of all that had operated on the mind of the Governor and his adviser during the existence of martial law. The course the case took before the magistrate illustrated the absurdity of such a prosecution, in the absence of any evidence of bad feeling or motive. The magistrate's notion of a criminal prosecution of a Governor of a colony evidently was, that if a police magistrate differed with him in opinion on an act of Government he might be dealt with criminally, for he said :—

“To my mind the important question for the jury is whether Mr. Eyre was justified in continuing the proclamation of October, and maintaining martial law till the 14th November—long after the execution of Gordon and the admitted restoration of tranquillity in the island. If that were the only question in this case, I should feel it my duty to commit him for trial.”

Upon this the counsel for Mr. Eyre observed with obvious truth :—

“Then the offence imputed is that Mr. Eyre *failed to use his influence over the Council to induce them to withdraw the proclamation of martial law*. That might be a question which might be urged against Mr. Eyre, as affecting his fitness to hold the position of Governor, *it could form no part of a criminal inquiry.*”

The magistrate upon that said :—

“It was *during the continuance of this proclamation, in a time of peace*, that the alleged cruelties and excesses were committed.”

Which plainly implied the notion, on the part of the

magistrate, that the Governor was *responsible for what was done by anybody*. But then arose the question whether it *was* time of peace, or whether the rebellion *was* indeed entirely suppressed, and what is meant by suppression of a rebellion, and whether or not it was to be considered with reference to the general condition of the island. As to this Mr. Eyre's counsel said :—

“Here there was nothing but a hazy charge of ‘repeated acts of oppression,’ and the evidence produced to support it came from men who, upon their own showing, knew nothing, and being confined in their cells, could have known nothing, of the *general state of the island or the outrages being committed or threatened against the constituted authorities of the place*. Lake never stirred out of Morant Bay from the time of his arrival, and what was there to connect Mr. Eyre with the acts deposed to by the other witness? The witnesses selected by the Jamaica Committee—and it was important to bear in mind that they had been ‘selected’—had *said nothing, and probably knew nothing, of the state of anarchy prevailing throughout Jamaica*, and but for the facts occasionally elicited by him in cross-examination it might be inferred that there had never been any outbreak at all, or any outrages committed by the insurgent blacks in any part of the island. It was said there was no outbreak at Kingston, and happily there was not, owing to the prompt, vigilant, and effective precautions taken by Governor Eyre to prevent it. But for his zeal, not only the twenty-eight victims of this rebellion—men, women, and children—but the whole white population might have been destroyed. But for that every white man and woman, for there were only 13,000 against the 450,000 blacks and coloured residents, might have been forced into the sea, and yet no sympathy was expressed for these murdered people, and not a single witness had been examined as to these outrages of the insurgents. It had been too much the fashion to discuss these events as if they had occurred at home, and little allowance was made for the frightfully responsible position in which the Governor was placed. Doubtless excesses had been committed by the soldiery, but was Mr. Eyre to be held to blame for every act committed in any part of the island? If it was sought to be shown that there was no necessity for martial law, why not have called some *custos* or magistrate of Jamaica to prove the fact; to show that there had been no seditious meetings, no rescue of prisoners, no threats of destruction, no burning of Court-houses or murder of white people? ‘Chitty’s Prerogatives’ had been quoted to show that it was illegal to issue a proclamation—that being the peculiar privilege of the Crown—for any private purpose. But how could Governor Eyre’s act be thus defined when he was the representative of the Crown? He was acting under the advice of the council of war, which included all the leading and most intelligent people of the

place, and the Chief Justice and other legal officers of the colony, and they came to the conclusion that the proclamation was necessary. If Mr. Eyre was to be indicted, why not his legal advisers, whom he was bound to consult?"

Mr. Eyre's counsel then proceeded at great length to discuss the state of affairs in Jamaica preceding the issue of the proclamation, quoting largely from the evidence of ex-Governor Eyre and others before the Commission.

Here, however, a question arose as to what portions of the examinations of Mr. Eyre and the documents put in by him before the Commissioners were to be deemed as evidence. The magistrate was willing to admit some portions, but only portions. The counsel for Mr. Eyre contended, as Mr. Hannen had contended in the case of Colonel Nelson, that if part of a man's statement is put in against him, the *whole* must be taken. The magistrate, however, declined to admit the whole, but only such portions as he deemed advisable—though on what principle he made the selection it is impossible to divine, seeing that the Commissioners admitted any documents or communications received by Mr. Eyre during the continuance of martial law. In the result the nature and scope of the prosecution may best be described in the words of the worthy magistrate in committing Mr. Eyre for trial. He said:—

"The question as to the legality or otherwise of the proclamation issued by Mr. Eyre was one entirely for the consideration of the grand jury, who would decide whether, looking at the state of the island, the outrages which had been committed in St. Thomas's-in-the-East, the absence of any large military force at Mr. Eyre's command, and the *advice given by the gentlemen to whom he had a right to look for advice*, he was justified in issuing such a proclamation; and whether, if an error had been committed, he was fairly absolved from the consequences; and, finally, whether he was further justified in continuing that proclamation in full force till the 13th of November, and thus permitting certain acts to be committed which had been described as cruel and oppressive. He then referred to the statements of Ray, Marsh, and other witnesses, as to the character of these acts, committed long after the restoration of peace, and also as to

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the expeditions sent to Easington and Stoney Gut, and the violence committed, although there was no proof of a single act of rebellion having been committed in those places, and the people's houses, when ransacked and destroyed, had been found to contain no weapons of war beyond a *few sugar-knives used in their vocation.*"

These sugar-knives had been described by the witnesses as *three feet long, and like cutlasses.* The magistrate went on :—

"He then referred to the admissions made by Mr. Eyre in his correspondence with Mr. Cardwell, and to the detention of Phillips, Levien, Bruce, and other prisoners, without any apparent cause, when they might have been examined before a magistrate in the district where they were taken. He considered the case of Phillips especially as one of great hardship, and if Mr. Eyre did not expressly sanction the treatment of Phillips, he was in the city at the time, and had been in correspondence with his subordinate officers upon the subject of his detention. Considering all the circumstances of the case, he felt it his duty to commit Mr. Eyre for trial at the next Court of Oyer and Terminer at the Court of Queen's Bench. Addressing the defendant, Mr. Vaughan asked him if he had anything to say in his defence, accompanying the question with the usual caution."

Mr. Eyre thereupon *did* say something, and something which echoed throughout England. He rose and spoke these words :—

"I have only this to say, that not upon me, but upon those who brought me here, lies the foul disgrace that a public servant who has faithfully discharged his duty for upwards of twenty years, has been now, after two years and a half of persecution, brought to a criminal court and committed for trial for having performed his duty at a trying moment, and thereby saved, indubitably, a great British colony from destruction, and its well-disposed inhabitants, white and black, from massacre or worse. (Applause in the court, which was instantly suppressed.) I do not envy the feelings of those who, having first conspired to bring me and my family to ruin, have now succeeded in branding me with the additional stigma of a criminal prosecution ; but I have this consolation, I rejoice in thinking my conduct has been impugned only by a small and unimportant section of the community, and that the decision of this Court will not be accepted by the higher tribunal to which the case has been referred. I am satisfied that the large majority of my fellow-countrymen do not sanction these proceedings against me, and to their sense of justice, and to their common sense, I may say, I confidently entrust my honour as a gentleman and my character as a public officer. I have nothing further to say."

These simple but emphatic words, pronounced with evident emotion, produced a profound impression upon all who heard them, and, when they appeared next day in the papers, that impression was diffused, as by an electric shock of feeling, all through England. The culminating point of persecution and oppression had been reached, and the result was a reaction; and from that moment the power of the persecutors was broken—the spell they had wielded so long by means of fallacy or falsehood was dissolved, and the English public saw, by one of those sudden perceptions which often flash upon the popular mind as by instinct, that the cause which had been so long paraded and vaunted as the cause of justice, was the cause of sectarian animosity and fanatic hatred. Men seemed all of a sudden to see and feel that they had been miserably deceived and misled by unhappy misrepresentations, and that they had mistaken the vindictive persecution of a victim, for a righteous vindication of justice. They saw that Mr. Eyre had been the victim of prejudices excited by calumny and clamour; that a persecution so persistent could not be the result of a sense of justice, but of a passionate longing for revenge, and they revolted from it with disgust. The cheers which greeted the few eloquent words of Mr. Eyre reverberated through the country and awoke echoes in the hearts of millions of his countrymen. At the moment of his lowest humiliation he had, (as often happens in this world), reached the crisis of his fate, and just as his enemies were rejoicing, with the rancour of mean or narrow natures, that they had inflicted it upon him, their power was broken for ever, and the ex-Governor of Jamaica went forth from the vile police-court, the object of his country's sympathy.

With the fatuity of blind and insensate animosity, his enemies did all that in them lay to deepen and

intensify this feeling, and, pending the proceedings, the following letter from Mr. Buxton, the former Chairman of the Jamaica Committee, to Mr. J. S. Mill, the then chairman, appeared in the newspapers :—

“I see by the newspapers that the Jamaica Committee have applied for a summons against Mr. Eyre, upon a charge of his having committed misdemeanours in his capacity as Governor of Jamaica, under the Act of 11th and 12th William III., cap. 12, to the effect that if any governor should be guilty of oppressing any of his Majesty’s subjects in the Plantations, he might be indicted and punished in England; and also under the 42nd George III., cap. 85, and 11th and 12th Victoria, cap. 42.

“Now, when the Jamaica Committee decided to prosecute Mr. Eyre on a charge of murder I withdrew from it, partly on the ground that I did not consider that Mr. Eyre’s acts, however outrageous, amounted to murder; and, secondly, because I thought it would tend to reinstate Mr. Eyre in public opinion, and have in every way a disastrous effect if an unsuccessful attempt were made to bring him to trial on such a charge.

“Neither of those objections apply to the course now taken by the committee, and though I deeply regret that such a long time should have elapsed before this step is taken, yet I am decidedly of opinion that Mr. Eyre ought not to escape due punishment for the *awful cruelties that were committed with his express sanction in Jamaica*. I trust, therefore, that the committee will permit me to co-operate with them in their present attempt, and as it will no doubt involve a large expenditure, I shall be happy to subscribe £300 towards it.”

It will be observed that in this document Mr. Buxton did not scruple deliberately to write and *publish* of Mr. Eyre—then about to take his trial on a criminal charge—that “*awful cruelties were committed by his express sanction in Jamaica*.” This was deliberately written by Mr. Buxton in the summer of 1868, two years after the Secretary of State had deliberately, in an official despatch, declared that the Government “did not impute to Mr. Eyre personal knowledge of the severities deemed excessive” * — two years after Mr. Cardwell had publicly declared in his place in the House of Commons that Mr. Eyre was “a man of courage and humanity.” † It is difficult to write

* Despatch 18th June, 1866, *vide ante*.

† Hansard’s Debates, vol. 184, p. 1820.

of such conduct as Mr. Buxton's in terms adequately descriptive, and yet consistent with courtesy, or with historical propriety. It is best to leave it without comment, because the strongest language that could be employed to characterise it would fail,—would *utterly* fail,—to convey any idea of the painful impression it was calculated to make upon the minds of men who had any regard for truth.

What impression it made upon the gentlemen of England was next day made manifest beyond possibility of mistake by an admirable and remarkable letter from Lord Overstone. Almost immediately upon the appearance of Mr. Buxton's letter, expression was given to the general feeling of indignation and disgust by the following letter from Lord Overstone, and the expression of the feelings of a nobleman so calm-minded and so just, produced a profound impression upon the public mind, as subsequent letters showed. Lord Overstone wrote thus to Sir Roderick Murchison :—

“My dear Sir Roderick,—I have hitherto abstained from taking any part, and, indeed, from expressing any opinion, with regard to the legal proceedings which for so long a time have been directed against Governor Eyre. But these proceedings have now reached a point at which, it appears to me, he is entitled to look for the sympathy and support of the public. That appeal he has made in a few stirring words which he addressed to the magistrate before whom he was arraigned, and which appear to have excited a spontaneous outburst of approval from the bystanders even in a court of justice. I shall be mistaken if they do not elicit a warm response from many a British heart.

“Englishmen have always been ready and just in their recognition of services rendered in the faithful discharge of great duties, and at the same time considerate and generous when called upon to discharge the painful duty of criticising errors of judgment which may have occurred in circumstances of perilous emergency, full of difficulty and of danger. These virtues, I trust, are not yet obliterated from our national character.

“Funds, I understand, are really required for the effectual defence of Governor Eyre, and that pecuniary ruin is one of the cruel and unjust consequences which may arise from the present proceedings. This can never be permitted.

"I enclose my draught for £200 in discharge of my share of a public duty, which I doubt not will be widely recognised, and if recognised will be cheerfully fulfilled."

This was followed by similar letters from other distinguished individuals of all various shades in politics. For instance, there was the following from the Right Hon. H. U. Addington :—

"My dear Sir Roderick,—As the proceedings against Governor Eyre are now assuming the character of persecution, it is high time that impartial persons who have hitherto abstained from taking part in this painful business should come forward in support of that ill-used public servant. I enclose, therefore, a check for £50, which I will thank you to apply in aid of the 'Eyre Defence Fund.'

"Governor Eyre's conduct in the sudden and fearful emergency in which he was placed may not have been faultless, but he acted, under very difficult circumstances, as a brave and honest public servant should act, setting self aside and looking to the interests of the public alone, such as he viewed them, in a moment of great danger.

"Both justice and generosity require that, if he erred—which is a matter of question—his error should be treated with candour and liberality of spirit. It seems to me that Governor Eyre has not been dealt with in this spirit, and that from first to last he deserved kinder and more indulgent treatment at the hands of his country, which he did his best to serve honestly and faithfully."

In sending the above letter to the papers, Sir Roderick Murchison wrote in these terms :—

"Sir,—As you have already been the means of replenishing the 'Eyre Defence Fund' by the insertion of the letter of Lord Overstone to myself in your columns on the 23rd inst., I hope you will further oblige me by publishing the enclosed letter from my friend, the Right Hon. H. U. Addington, on the same subject.

"I have selected this letter from a great number which have been addressed to me with subscriptions by men in all ranks of life and of various shades in politics, because it comes from a high-minded, calm-judging, and experienced public servant, who, like Lord Overstone, has hitherto taken no part in this matter.

"We, who are endeavouring to procure the means of defending Governor Eyre against the efforts of the 'Jamaica Committee' to punish, degrade, and ruin him, can see no end to the prosecutions. Thus, if the present indictment for misdemeanour should fail, we are given to understand that parties who are said to have plenty of money will then proceed against the

ex-Governor in various actions at civil law. Hence the absolute necessity of securing an adequate defence fund."

Similar letters appeared in the papers from other gentlemen; for instance, the following from Mr. John Humphrey, the late M.P. for Andover, addressed to Mr. Hamilton Hume, the Secretary of the Eyre Defence and Aid Fund:—

"I have read with pain the letter from Mr. Charles Buxton to Mr. J. S. Mill (published in *The Times* of the 16th inst.), offering co-operation in and a subscription of £300 towards the expenses of the prosecution now being instituted against Mr. Eyre in connection with the Jamaica Insurrection. That such a prosecution should be permitted reflects, in my opinion, discredit upon our country, and I should have expected greater liberality of feeling on the subject from the Liberal member for East Surrey.

"No loyal Englishman could read unmoved the few words which were reported to have been spoken by Mr. Eyre at the close of the proceedings before Mr. Vaughan.

"Those words will intensify the feelings of sympathy for Mr. Eyre and his cause, which are, I believe, shared by the great majority of our countrymen.

"But sympathy will not meet the difficulty unless backed up by substantial contributions towards the heavy expenses which these proceedings will entail upon him.

"Every man who feels with me that Mr. Eyre's energetic measures alone saved our colony, and should be held up to every Colonial Governor as an example, not as a reproach, will, I feel certain, come forward with material help.

"*Mr. Buxton subscribes £300 for the attack.* I am happy to be able to enclose my check for £300 towards the defence."

The appearance of these letters indicated a very strong feeling in the public mind, and showed the powerful reaction which had taken place.

Mr. Buxton, finding he had disgusted many of his constituents, addressed to one of them the following letter, which he published, and in which he not only repeated, but greatly aggravated his offence:—

"I have received your letter, and have no right to complain of the severe tone you have thought fit to adopt. Throughout this unhappy Jamaica business, I am well aware that my course has been highly disapproved by some of my most respected supporters; but I am sure you would

have despised me, and I should have despised myself, had I, feeling so intently on this subject, have suffered that consideration to silence me.

"On one point you are completely deceived. I have not, as you think, denounced Mr. Eyre for his conduct during the suppression of the disturbances. So far from it, I have repeatedly said that much allowance was due to a governor in a time of great panic and emergency; and I have deliberately refrained from commenting on his conduct during that crisis.

"On the other hand, I have never wavered in the opinion that there ought to be a judicial investigation into *his conduct in putting to death 350 men and women on and after the day of his own official announcement that all disturbance was at an end.**

"That conduct may be shown to have been justifiable—nay, to have exhibited admirable force and firmness. Great numbers of the wise and good think so; and you agree with them. But am I really wrong in my opinion that acts of that kind ought to be examined, not in a newspaper controversy, but by a competent tribunal? Candidly, now, would not you feel that yourself, had these persons not been negroes, but Irish or English men?

"So long as the demand for that investigation was made upon a charge of murder, I refused to concur in it. When that charge was dropped, and the investigation was demanded upon a simple charge of misdemeanour, I could not with honour have stood aloof.

"You urge that the attempt to prosecute Mr. Eyre in Shropshire and General Nelson in London having been made and failed, it is cruel persecution to continue such endeavours. On this point I have felt the greatest hesitation. There is, I admit, a shocking look, almost of malignity, in such persistence. It is, however, my deliberate judgment that acts of the kind referred to ought not to be condoned from any regard, however honourable and humane, for the feelings of the actor.

"It would be very painful to me to suppose that these proceedings would entail pecuniary ruin upon Mr. Eyre's family. Happily, it is notorious that sums vastly beyond all possible costs are at his disposal. I, for one, should be glad to learn that the present Government has undertaken his defence.

"Many of Mr. Eyre's warmest supporters are my personal friends. I admit and admire their chivalrous spirit. But let me, on the other side, assure you what I know to be true, that Mr. Mill and his coadjutors are swayed by no base ill-will towards Mr. Eyre, but by the most disinterested public spirit and sense of duty. They are, and will be, subject to an almost overwhelming torrent of public indignation.

"Now, I am painfully deficient in that 'pure and perfect courage' which is the first of political virtues, and I shrink with a timidity of which

* *Vide Appendix to the Report of the Commissioners. Official Despatch.*

I am myself ashamed from the irritation this step will excite. Still I am not so mere a coward as not to challenge my fair share of the obloquy and expense which these proceedings must involve, when I believe them to be founded in justice, and highly important for the protection of our subject races.

"I feel it due to myself to publish this letter, not that I expect to convince any one that I have acted rightly, but in hope of its showing the more candid of those who have condemned us that I am not influenced by the cruel malignity which many seem to suppose. *I have carefully excluded every word that might seem to prejudice the case.*

"P.S. I ought to say that I write without any concert with the Jamaica Committee, to which I do not belong."

Of this letter—longer, more elaborate, more deliberate than the other—it is still more difficult—it is impossible to write with calmness.

It contains a deliberate specific statement, professedly vouched by a specific reference to an authentic document: that "*Mr. Eyre put to death 350 men and women, on and after the day of his own official announcement that all disturbance was at an end.*" For which (it is written), "*vide Appendix to the Report.*" That is to say, here is a deliberate statement, written, printed, and published by a member of Parliament, by a man of position and apparent respectability, moving among gentlemen, that "it appears by the Appendix to the Report of the Commissioners that Mr. Eyre put to death 350 men and women on and after the day of his own official announcement that all disturbance was at an end!" It is needless to state—to any one who has given the least attention to the facts—that nothing of the kind appears from that or any other document,—that every part of the statement is without a particle or a pretence of foundation, except in Mr. Buxton's distorted imagination, or perverted opinion; that it is a pure fiction; that Mr. Eyre never put a single person to death;* that he had nothing to do with the

* No proceeding of court-martial was submitted to him except Gordon's, and then only to afford him an opportunity of exercising the prerogative of mercy if he thought it proper to do so; he had nothing to do with the trial.

trials by court-martial; that they took place entirely under military authority; that he never, at any time, prior to the trials which took place under martial law, made an official or any other announcement that "all disturbance was at an end;" that, in fact, the whole statement is fallacious: compounded of Mr. Buxton's exaggerated notions and confused ideas, with his erroneous impressions of the facts. The only document in the Appendix professedly referred to as bearing out his most monstrous statement refutes it utterly. The simple fact that 350 was about the total number of persons put to death by court-martial—the remainder having been killed in the field—mostly by soldiers in the absence of their officers, and *all* at a distance from Mr. Eyre and not under his orders—suffices to show the absolute absurdity of the statement. The "return" of the number of persons put to death during martial law makes this manifest, for 350 was the *total* number put to death by court-martial, and not even Mr. Buxton could have dreamt of making Mr. Eyre responsible for acts of homicide by soldiers in the field, of which in most cases not even the *officers* knew. So that Mr. Buxton's statement came to this, that before any of the executions by court-martial, Mr. Eyre had made an official announcement, "that disturbances were at an end," and that, at all events, after making such an announcement, he put to death 350 persons. Mr. Buxton mentioned no date; and referred to the Appendix as his authority for the whole statement. There is no such document there as an "official announcement" that disturbances were at an end. If Mr. Buxton alludes to the despatch of 24th October, just after the execution of Gordon, the rebels *attacked the troops on that day*; and his statement comes to this: "that in that despatch Mr. Eyre stated that all disturbance was at end," and "that after this he put to death 350 persons." The first part of the statement was entirely untrue, and as to the second, the

whole number of persons executed under martial law was about 350, and they extended over the *whole* period of martial law; from the 13th to the 24th October—ten days—as well as from the 24th to the 30th, the date of the amnesty, and from that date to the termination of martial law. If Mr. Buxton meant the amnesty—again both parts of his statement are entirely untrue—it does *not* declare that “all disturbances were at an end;” and it is of course still more impossible that the *whole* number put to death can have been put to death after that date than after the earlier date. The very return referred to by Mr. Buxton shows that after that date about ninety persons were executed, instead of 350; and this number, be it observed, at five different places, distant from each other and from the capital, where Mr. Eyre for the most part was (making many hurried visits to such places), and under the military authorities at those places, so that it appears that he could not have personally directed the particular executions, or have been cognizant of particular proceedings. It further appears that many, if not most, of these cases, were cases of murder, or attempted murder, and the remainder were charged with participation in the rebellion, which of course is a capital crime by martial law, being the very crime it is intended to put down. And then finally it appears from the Report, “*that in the great majority of cases the evidence was sufficient to sustain the findings,*” which was suppressed by Mr. Buxton. Such is, so far as the author can collect it, the plain *truth*, as it appears from the Report and the Appendix, and which the reader can now compare with Mr. Buxton's statement, and then will be enabled to appreciate the regard for truth which it exhibits, and the sincerity of the *concluding* passage in his letter, in which, after publishing that horrible statement, that Mr. Eyre, after he had deliberately declared all disturbance at an end, put to death 350 persons, the writer added :—

"I have carefully excluded every word that might seem to prejudice the case."

It may appear scarcely credible that a man in Mr. Buxton's position could have written and published such a letter. And for the credit of the country the author would willingly have suppressed it if he could. But it forms a part of the history of the case which cannot be suppressed, because there can be no doubt that these letters of Mr. Buxton, and the disgust and indignation they called forth, powerfully contributed to enlighten and awaken the public mind as to the real character of these prosecutions, and produced a wide-spread and deeply seated feeling, that they were dictated by animosity, and based on clamour and on calumny. Even had the letter been founded on truth instead of untruth, the publication at such a moment would have been, it was perceived, in the last degree indecent, as a bare-faced attempt to prejudice the ex-Governor by statements, the natural effect of which was to excite the public mind against him. And the very attempt to do so betrayed a spirit of animosity and unfairness, which broke the power of the prosecutors, and caused a prodigious reaction in his favour.

How wildly—how utterly at random—Mr. Buxton wrote on the subject, can be shown from his own speech in the House of Commons. Out of his own mouth he can be convicted of the grossest carelessness (to use the most charitable language), in dealing with the character of another man, a man of courage and humanity. For in that speech he put the date at which Mr. Eyre declared the rebellion at an end as the 20th October, and then he went on to say :—

"On and after that day—exclusive of those who had perished before—considerably more than 300 persons were put to death." (Hansard's Debates, vol. 184., p. 1800.)

And then he went on to say, that after the 30th October—

"Of the persons executed, 189 were sent to the hangman after that day ;

and out of these only twenty-five were accused of murder, the remainder only of rebellion." (Ibid.)

Now the Commissioners in their Report did not venture to say that the execution of martial law could safely have been stopped until the 30th October, and after that date, according to the return in the Appendix referred to by Mr. Buxton himself, about 90 persons were executed instead of 189! In the face of these figures and facts, appearing in the document he refers to, Mr. Buxton published to the world that Mr. Eyre put to death 350 persons after he had announced that all disturbance was at an end, and then adds that he had carefully excluded everything that could prejudice his case!

The above letter excited a fresh burst of indignation, and the following letter from General Anson at once appeared:—

"Mr. Buxton, in his letter in your columns this morning, says that the accusations against Mr. Eyre ought not to be examined in a newspaper controversy. I quite agree with him; but, as he holds that opinion, *why does he always manage to give the public his views on the question, just as Mr. Eyre is being tried before a competent tribunal?* The last time he favoured us was while the case was before Mr. Vaughan, and now that the jury which is to try Mr. Eyre is being impanelled, he avails himself of this last opportunity to inform the public that Mr. Eyre put to death 350 men and women.

"After this *resumé* of the Jamaica outbreak, he winds up his letter by declaring that he has carefully excluded every word which might seem to prejudice the case.

"Mr. Buxton seeks to place the Jamaica Committee on the best possible terms with the jury. He says, 'Mr. Mill and his coadjutors are swayed by no base ill-will towards Mr. Eyre, but by the most disinterested public spirit and sense of duty.' This covers the 'shocking look, almost of malignity,' in their conduct, but of course the apparent harshness of Mr. Eyre's conduct in a great crisis is not to be excused on the same ground of a feeling of public duty.

"The worst part of Mr. Buxton's letter is where he touches on money matters. He says, 'It would be very painful to me to suppose that these proceedings would entail pecuniary ruin on Mr. Eyre's family;' but, while professing this, he assures the public that it is notorious that 'sums vastly beyond all possible cost are at Mr. Eyre's disposal.' Now, I ask

Mr. Buxton on whose authority he has made this statement, which is absolutely false ; and I would further ask him whether he considers it a gentlemanly act to check the flow of subscriptions to the Defence Fund by making this statement without having first assured himself of its truth.

“The Jamaica Committee have virtually ruined Mr. Eyre, and if they persist in their criminal prosecution, as well as in the civil cases which they have promoted against him, the Defence Fund Committee will have to ask the public for much larger subscriptions than they have hitherto received.

“Might I suggest to Mr. Buxton that the best way for him to set himself right with his constituents and with the public after his letter of this morning, is to forward to the Eyre Defence Committee a check for the same amount which he forwarded to Mr. Mill for the prosecution ?”

Numerous other letters appeared from persons not in such a conspicuous position, indicating the same feelings and opinions.

The effect which had been produced upon public feeling, and the reaction which had taken place in public opinion, were significantly indicated by the increased subscriptions which were sent in to the Eyre Defence and Aid Fund. Stimulated by the letters which had appeared, those who had subscribed already sent still larger or additional subscriptions ; while many who had not subscribed before now came forward with their aid, and it was made abundantly manifest that public sympathy was now fully with Mr. Eyre. Many distinguished persons, such as the Duke of Northumberland, Earl Tankerville, Lord Leconfield, Sir G. Seymour, Sir William Eden, Lord De Blaquiere, Sir Roderick Murchison, John Morant, Esq., and others, who had already subscribed liberally, subscribed again. And some subscribed who had not, until now, subscribed at all.

But perhaps there was nothing which produced so powerful an effect upon the public mind, as the appearance in the lists of subscribers of the name of Sir William Erle, lately Lord Chief Justice of the Court of Common Pleas. This distinguished man had been for well-nigh a quarter of a century one of her Majesty's Judges, and in the course of a long judicial career had,

by his earnest love of justice, his eminent judicial ability, and his many great qualities of mind, acquired in no ordinary degree the confidence of the suitors, and the esteem and admiration of the Bar. His mind, indeed, was of an order eminently judicial, large in its scope, deliberate in its judgment, and powerful in its grasp. Marked by great native vigour, it had been enlarged and elevated by academical scholarship, and disciplined and strengthened in a long course of forensic contests, before his elevation to the Bench; and it had afterwards been informed, and exercised, by an unusually long judicial experience. For many years he sat in the Queen's Bench, in the times of Lord Denman and Lord Campbell, along with judges such as Coleridge, and Wightman, and Patteson, and it may safely be said that he was equal to the most powerful of them. And when he came to preside in the Common Pleas amidst such judges as Williams, and Willes, and Byles, it is enough to say his power was admirably displayed, and it was felt that never in our time had there been a chief who more nobly embodied the dignity of justice and the majesty of law. His force of character was made manifest wherever he appeared. In the course of his long judicial career there was not a county in England in which he had not sat to administer justice; not a city or county town in which his grave and weighty words had not been listened to with respect. The universal opinion of the Bar was that, take him all in all, he was the ablest judge in England. And perhaps there never has been in our age a judge at once so honoured and so beloved. After he had retired, still in the full vigour of his faculties, his mind had since been still further enlarged and exercised by his judicial labours on the Committee of Privy Council—that august tribunal which forms the court of appeal from all our colonies. Nor was this all. Parliament and the Crown, knowing the value of his matured wisdom and his sound

judgment, had employed them upon more than one of the great questions of the day, and he was, at this very time, sitting upon more than one important commission, and presiding over one of the *most* important that had ever sat. And if there was a man in all England whose judgment, upon matters requiring the exercise of the judicial faculty, was more highly esteemed than that of most others—that man was Sir William Erle. Such was the man who, after two years to form his opinion, now came forward, and publicly and emphatically *pronounced* it, by a subscription to the fund for the defence and aid of Mr. Eyre. And to make the adhesion if possible still more emphatic, Lady Erle, at the same time, sent *her* subscription, and added the grace of her womanly sympathy to the weight of his matured judgment.

It was, of course, quite impossible but that these indications of the judgment of the most eminent, enlightened, and intelligent men in the country should powerfully influence public opinion in favour of Mr. Eyre. It did not of course necessarily imply that he was considered to have been perfect in his conduct or infallible in his judgment; few men would have been likely to be so, suddenly called upon to meet and to deal with so terrible an emergency. But it indicated, beyond a doubt, a matured and decided opinion that there had been nothing in his conduct which was *culpable*, no error of judgment so gross as to justify a criminal prosecution, even for mere misdemeanour. For even *that* involved a charge of *culpable* misconduct or *gross* error of judgment; while at the same time it involved no *more*, and did not necessarily imply wilful or intentional misconduct. The effect of the judgment of all these eminent persons, therefore, (to put it at the lowest) plainly amounted to this, that there had been nothing in Mr. Eyre's conduct that could be deemed culpable; and that there had not even been any grievous error of judgment.

And so his case went to the Court of Queen's Bench. The magistrate sent the depositions to the Crown Office, whence they were furnished to the learned judge who in due course would charge the grand jury, and the prosecutors prepared the indictment which was presented to the grand jury. It contained twenty counts, and may be analysed thus :—

It charged as oppressive and illegal the issue and maintenance of martial law ; directing the execution of it ; and allowing the trial of persons by illegal tribunals under its pretended authority. It then charged various specific acts as illegal and oppressive, especially the removal of six persons, including Gordon, out of the non-declared district into the declared district, in consequence of which Gordon was executed, two were flogged and three were imprisoned ; and then it charged generally oppressive and illegal conduct.

Such was the case which came before the Court of Queen's Bench, and upon these materials the senior *puisne* judge of the Court, Mr. Justice Blackburn, whom the Lord Chief Justice afterwards very truly described as “a distinguished judge,” and who certainly is distinguished for depth of learning and strength of judgment, had to charge the grand jury. And the learned judge accordingly delivered a charge which, although it laid down, even as to legal culpability, rules and principles which many may think somewhat too severe, and took a view of the case by no means doing adequate justice to Mr. Eyre, contained, on the whole, the materials for a fair and just judgment on the case, and upon which he charged the grand jury with great clearness and distinctness. Summed up in a sentence, it came to this: the Governor is liable for any act or neglect which involves grave culpability, and in judging of that the *whole* of the circumstances must be looked at *as they appeared to him at the time*. At the outset, in plain, simple language, the learned judge thus stated the case :—

“It will no doubt be proved before you, and will not be disputed, that

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in the year 1865 Mr. Eyre was Governor of Jamaica, and that, in October of that year, upon the breaking out of an insurrection, Mr. Eyre, as Governor, and in order to put it down, took steps into the legality of which inquiry is now to be made. It is not disputed that he did, with the assent of his council, proclaim martial law, and put it in force in this sense,—I mean that, for the purpose of putting down the insurrection, he not only caused troops to act in the proclaimed district for the purpose of putting down the insurrection, and suppressing armed resistance, but he also caused what is called ‘martial law’ to be executed,—in the sense of summary process, superseding the common law, and that a number of persons were tried by this summary process, not by a jury, in the ordinary way; and that he caused the sentences to be executed, a very considerable number being capital, and others severe punishments; and further that he caused this to be done for a period of thirty days, which, by a local Act, to which I shall have to call your attention, was the utmost limit he had power to do. The question is whether, in doing these things, he did anything for which he is criminally responsible.”

Now, here, it will be observed, as the learned judge stated most truly, the question was one of *criminal* responsibility, which, as he went on to explain, was a very grave degree of culpability. But then, as is also obvious from his exposition of it, that legal culpability which amounts to criminality in a charge of mere misdemeanour or misbehaviour is only a high degree of moral culpability. The difference is entirely one of degree.

“Now, gentlemen, the first thing, of course, that arises upon that is, what is the rule of law, where an officer is employed under such circumstances that it is his duty to put down an insurrection—what are the circumstances that would make him criminally responsible? I think that the legal duty, and consequently the legal responsibility, of an officer placed in such a situation, when it becomes his duty to suppress the insurrection, varies, and must vary, according to the power he has, either by the general law or by particular statutes referring to his particular case. The powers of a governor of a colony, for instance, are different from, and more extensive than, those of a lord-lieutenant of a county of England or a mayor of a borough in England, in which a riot or insurrection has broken out, and consequently both what he may be authorised to do, and what he may be punishable or blameable for if he does not do, is different from theirs, but the principle upon which the responsibility of each officer depends is, I think, the same. The officer is bound to exercise the powers which the law gives him, in the manner which, under the circumstances, is right, and if he fails to exercise those powers, if something which he ought to do

is not done by him and mischief occurs, then, if the circumstances are such as make it his duty to exercise them, and he does not do it, he neglects his duty, and if the neglect is such and to such an extent as to amount to criminal negligence, then he is guilty of a crime for which he may be indicted."

No one will say that the rule or test of criminal culpability was laid down too loosely or indulgently. On the contrary, it might be thought—and it appears to the author, after a careful examination of the authorities—that it is laid down far too strictly and far too severely. For the learned judge actually took, as the rule or test of criminal liability, in a case of *extraordinary* emergency, a rule laid down (in the case of the Mayor of Bristol) on the occasion of a *mere ordinary* riot in this country, where, if the magistrate have only ordinary sense and firmness, he cannot go wrong, there being plain provisions of statute law on the one hand, and ample and overwhelming force easily accessible on the other. It is obvious to the mind of the author that in applying this test to the case of a formidable rebellion in a nation where the rebel race is in a tremendous majority and there is a "mere handful" of military, there was a very serious fallacy, unless indeed what was meant was that the officer was only bound, under such extraordinary circumstances, to bring such an amount of sense and firmness as, *under such circumstances*, a man of *only* ordinary sense and firmness might be expected to bring. It is obvious, however, that, to the extent to which the learned judge enhanced the measure of sense and firmness to be expected from the officer, to that extent the throwing out of the bill enhanced the value of his discharge. It will be obvious that legal culpability, in the view of the learned judge, was only a grave degree of moral culpability. He said:—

"It is not a *little* failure of duty which would make him responsible, a *great* failure undoubtedly would. It must be put, to a very great extent, in each individual case, to the common sense of the jury, whether or not the degree of failure of duty is criminal. Honesty of intention in such a

case is very important, for if it be shown that the officer, under colour of exercising his office, was really moved by any other motive than an honest desire to do his duty, there is no doubt at all he would be guilty of a misdemeanour ; but, even if there was a perfectly honest intention, that would not of itself exclusively determine the question in the officer's favour, although it would be a very important element indeed. I think the officer is bound, under such circumstances, to bring to the exercise of his duty ordinary firmness, judgment, and discretion. I think he is bound to do that, and I think in such a case the jury have to determine upon the evidence, first, whether the circumstances were in fact such that what was done really was in excess of the duty of the officer, that is, more than he ought to have done as a reasonable man of ordinary firmness ; and secondly, whether a person placed in the position of that officer, having the information that he had, believing what he did believe, and knowing what he did know, if exercising ordinary firmness, judgment, and moderation, would have perceived it was an excess."

That is, as it should seem, only exercising such a degree of sense and firmness as a person only possessed of ordinary sense and firmness might be expected to exercise under extraordinary circumstances. If it was meant that the man was bound to exercise as much sense and firmness under extraordinary circumstances as he might have been expected to exercise under ordinary circumstances, it is conceived the direction erred on the side of extreme severity. But all the better for Mr. Eyre, since, even on that extreme view of his responsibility, the grand jury threw out the bill. However, the learned judge further explained himself thus :—

" Much allowance should be made for the difficulty of his position, *but not too much*, and it must ultimately, in such a case, be a question of *more or less*, and therefore a question of fact for a jury. . . . Were the circumstances *really* such as that what he did *was* in excess of what he ought to have done ? and next (*for that is not decisive*), were the circumstances, *as they appeared to him*—for you must, under these circumstances, *put yourselves in his place*, and ascertain, not merely what *were* the facts, but *how they appeared to him*—would he, as a reasonable man, taking all that he heard and believed, and the information brought to him, the circumstances under which he was placed, and all the rest of it, what would he think, supposing he brought, as I think he was bound to bring, ordinary firmness and moderation in the discharge of his duty, remembering that his

duty was not only to protect the colony, which it clearly was, but also to regard the rights of individuals, and not to oppress and injure them,—would a person, bringing that proper degree of calmness into operation, perceive that what he did was in excess?—that would be a question entirely of fact, and one for you to consider. Upon the evidence, was there excess on his part to the extent that would make him criminally responsible?"

Having thus laid down the rule or canon of criminal culpability—certainly not too favourably for the governor of a colony in an exceptional position and under an extreme and extraordinary emergency—the learned judge went on to discuss the great question which first arose, whether Mr. Eyre was right in *declaring martial law at all*; and this it is necessary to notice because it was afterwards pretended that the question of the legality of martial law did not arise, whereas the first head of complaint was for *declaring* martial law; and although, it is true, he might not necessarily be criminally liable, even though the proclamation were formally illegal (though the learned judge laid down that he *would*, as that would be an excess of his power), yet it is manifest that he could not be legally liable for issuing a *legal* proclamation; so that the question of the legality of martial law did directly arise. And the learned judge proceeded to deal with it thus:—

"The first question, you will perceive, is of the very last importance, viz., what were the limits of Mr. Eyre's powers as a Governor of Jamaica under the circumstances of the case? what could he do?—what power had the law given him to do—so that, when circumstances required the exercise of those powers, he would be bound to exercise them, and, in an extreme case, would be punishable for not exercising them? If he has gone quite beyond those, the case would be simple and straightforward, and you would have nothing to do, if you believe the facts to be so, but to find the bill. Then comes the question, what were the powers of the Governor of Jamaica at that time? That must depend upon the law that was in force in Jamaica."

And that law the learned judge proceeded to consider, and arrived at the conclusion—

"That in the reign of Charles the Second the law of England *as it was in the reign of Charles the Second* was in force in the colony."

And he went on to show that this included the power of martial law in *actual* rebellion :—

“And it certainly is established that the Crown has a right to grant to the colony a Legislative Assembly to make laws within the local jurisdiction of the colony itself, and to alter the English law, in the same way as our Parliament here could alter it ; to make colonial Acts, which bind within the limits of the colony to the same extent as the English law would bind here. Upon that, I was surprised to see, there has been a doubt raised : that the Colonial Legislature has no power to alter the law at all ; that it could not make an Act of a Colonial Legislature which would interfere or alter the privileges of Englishmen, or extend the law beyond what it had been before ! The colony is a settled not a conquered colony, and to such a colony there is no doubt that the *settlers from the mother country* carried with them such a portion of its common and statute law as was applicable to their new situation, and also the rights and immunities of British subjects. Their *descendants* have, on the other hand, the same laws and the same rights, unless they have been altered by Parliament.”

Here it will be observed that the learned judge avoided falling into the error the Lord Chief Justice had fallen into, that the common law applied to the *negroes*, who are *not* descendants of the *English* settlers. The learned judge went on accordingly to negative the monstrous notion that a man could be deemed criminal for carrying out the law of a colony :—

“But here we are dealing with a question of criminal law, and I think I should be wrong if I left you in any doubt about it. It is impossible to say we ever could punish a person acting in Jamaica or in any colony where there is a legislative assembly for acting *bona fide* and honestly under a legislative Act of the colonial Parliament. It would be monstrous that he should take upon himself to say that an Act of Parliament is binding, or should be punished for that.

“Therefore, I think we must start here by saying that Mr. Eyre, as Governor of Jamaica at that time, had *not only* those powers which, in the reign of Charles II., at the time the colony was established, the Crown had by its prerogative, and which he as Governor would have as representing the Crown ; but he has *also* those powers which were given him by the Acts of the Colonial Legislature.”

That is to say, not only the power of declaring martial law during *actual* rebellion, but also the far larger power

expressly granted by the Colonial Act of maintaining martial law during the existence of *danger*.

Here, again, the learned judge avoided the fallacy into which the Commissioners had fallen, and in which they had been followed by the Secretary of State and the Lord Chief Justice, in supposing that the Governor was *only* authorised to exercise martial law, and not common law, during *actual rebellion*, whereas the Colonial Act *expressly* authorised it during the continuance of *danger* :—

“Then come the two questions, what was the prerogative of the Crown, in respect of this matter, at the time of Charles II., *i.e.*, to proclaim martial law? and to what extent have the statutes of the Colonial Legislature given Mr. Eyre *more or greater power* than that.”

The learned judge, it will be observed, laid it down distinctly that the Governor had far *greater* power than at common law, and afterwards showed the *reason*, *viz.*, that in a negro colony the *danger* is infinitely greater than it *ever was*, or *ever could* be, in this country : and therefore the Colonial Legislature had, with the assent of the Crown, granted power to exercise martial law in periods not merely of actual rebellion but of *danger*. The censures upon the Governor for the *continuance* of martial law proceeded upon an entire *forgetfulness* of this. First the learned judge expounded the power to proclaim martial law at *common* law during *actual* rebellion :—

“No doubt from the earliest times the general rule was that a subject was not to be tried or punished, except by course of law : all crimes are to be tried by juries, subject to the guidance of the judge. That is the general rule, and is established ; but from the earliest times there was this also which was the law, and is the law still, that when there was a foreign invasion or an insurrection, it was the duty of every good subject, in obedience to the officers and magistrates, to resist the enemy, and for the purpose of resisting them, the executive officer could call them out, and, in point of fact, raise an army in order to fight them. In modern times that has become of little consequence, because we have, under the Mutiny Acts and the Militia Statutes and others, an armed force which can be raised and subject to the control of the law according to the statutes ; and it is of very little practical consequence now, but in old times, beginning with Magna Charta, and finally confirmed by Henry III., during all the barons' wars and afterwards, when there was no regular army, when the country was in

a state of insurrection, to meet that, there were persons entrusted with Commissions of Array from the Crown to raise an army to fight. As to that, everybody must feel at once that an armed force that was only to be punished by juries would be an intolerable nuisance, and could not be endured at all; consequently, the prerogative was claimed by the Crown, that the Crown by its prerogative might direct that that armed force should be kept in order by summary process, not by a despotism which would authorise them to kill anyone they please, but summary process, not waiting for the common ordinary process of the common law to keep them in order, and in that sense there was a martial law no doubt terribly liable to be abused, but which Lord Hale has, in a passage frequently quoted, said, was tolerated and excused because it was really the absence of all law, and that existed certainly I think I may say in time of war, and the Crown had that prerogative over that armed force which had been got together for the purpose of fighting in order to keep people in order. Supposing an invading army, for instance, took possession of Dover, and an English army fighting them, you could have no Court of Quarter Sessions sitting in Kent or Sussex, and no Assizes there; and really unless you were to have somebody to keep order there would be total anarchy. Upon that principle, the Crown claimed the prerogative in those early times (*most fortunately* now we have *not the occasion to consider this question at all*), summary proceedings by martial law, as they called it, in time of war, *when the rebellion was going on*, over others than the army. And the Crown made this further claim against the insurgents, that whilst it existed, *pending the insurrection*, and for a short time afterwards, the Crown had claimed, and, *de facto*, exercised, the power to proclaim martial law, in the sense of summary proceedings, to punish the insurgents, and to check and stop the spread of the rebellion by summary proceedings against the insurgents, so as, to adopt a modern phrase, 'to trample out the rebellion.' "

Such, as the learned judge expounded, was the *common* law power to declare and exercise martial law, restricted to a period of actual rebellion, or at the utmost a *short* time afterwards, just to make certain that rebellion was actually at an end.

Such being the general doctrine of martial law at common law,—that it is allowable in time of war: that it means military rule, and involves the power of securing military justice, the learned judge goes on to observe, what is obvious enough, that in this country the prerogative power could hardly require (if it required it at all) any but a *very brief* exercise of martial law, and only *during* actual rebellion:—

"The prerogative power must, if it existed at all, be strictly limited to necessity, and I think you cannot doubt that Mr. Eyre in keeping up martial law for thirty days after all armed resistance had been put down in a day or two, so that there was really a period of three or four weeks after all armed resistance had ceased, and when it would have been quite practicable to try any one by the ordinary tribunals : there can be no reasonable doubt that he did exceed what would be authorised on the most extended view of the prerogative."

Here the learned judge was entirely in error as to the *facts*, for, as the Commissioners reported, armed resistance took place *ten* days after the outbreak. This is a sufficient proof that the learned judge had not taken a too favourable view of the *facts*. As to the *law*, no doubt he was right. Then the learned judge went on to show that by *Colonial Acts* the prerogative power might reasonably be extended very largely, inasmuch as it would be required in colonies for the protection of the settlers of English birth or descent against foreign races, and that, therefore, it had been extended in the colony in question, and that the very object of the Local Act was to extend it :—

"You must remember that the colonists carried out with them, or they had given them by the Crown (it matters not which), the law as it was at the time of Charles II., and the Petition of Right was part of that law, and consequently neither the Crown nor the Governor had got the least right, in *time of peace*, of regulating an army by martial law, still less of declaring martial law in the sense of superseding the common law, and deciding that the people should be tried by summary process, although the courts of law were open. The Jamaica Parliament, having that before them, knew what it was, and knew what had been claimed by the Crown, and what had been refused by the English Parliament. Even if the Governor was inclined to the high prerogative view—the colonists would have every wish to protect themselves from oppression, but they *knew perfectly well that they were a slave colony, and that insurrections were likely to occur*, and that they were in a freshly conquered colony, surrounded by Spanish colonies, and likely to be invaded from abroad ; and that being so, the Legislature passed the Militia Act, and in many clauses they provided that everybody was to be a member of that militia. And then the militia were to be called out in time of peace, and to be subject to martial law, and punished by martial law, by officers holding courts-martial."

And then comes the important enactment in the original Colonial Act :—

"That upon every *appearance or apprehension of public danger* or

invasion, the Commander-in-chief may call a council of war, and by them at once *proclaim the Articles of war*, and command the presence of all subjects, the negroes, horses, and cattle, and for all such services as may be for the public defence, &c., and generally to do all such things as he and the council of war may think necessary and expedient for the defence of the island. Provided that *as soon as the common law is revived and in force*, the said negroes, &c., shall be discharged; and to the end that it may be known when the martial law ceases, and the common law takes its place, be it declared that when the colours shall be no longer flying the martial law shall cease and the common law revive."

Having thus stated the terms of the Colonial Act, the learned judge went on to expound it. It must be obvious that the whole frame and tenor of it assumes and implies that as the sole *cause* and necessity for martial law would arise from a *negro* rebellion, it was against the *negroes* previously that martial law would be exercised; and therefore there are the *special* provisions as to right to take the *property* of the English subjects, and a proviso that nothing shall be done against the common law, *i. e.*, as to the English, to whom alone the common law applied—a proviso which had been erroneously supposed to apply to the *negroes*, to whom it did *not* apply. The learned judge had already pointed out this, and so did not notice the proviso. He then went on:—

"Now, gentlemen, what does that mean? I must acknowledge that when I look at that Act, and I consider the words, *and I see the object the Jamaica Legislature had in view at that time*, I can have no doubt. It has, I know, been argued and urged that the only intention was that they might have martial law in the same sense as in the Mutiny Act, that they might call out the militia and put martial law in force to control the militia, but that had been already provided for by the former section; and the Act provides that when the occasion ceases, '*martial law shall cease and the common law revive.*' Looking at these words, I cannot put but one sense or meaning on them. I think that the Legislature of Jamaica meant to enact that the Commander-in-chief at the time should have very extensive power upon '*the apprehension or appearance of any public danger or invasion,*' that then he should have power, with the advice of a council of war, to do that which the Petition of Right had declared the Crown could not do in time of peace, and which it is doubtful whether the Crown could ever to any extent do in time

of war—I mean to supersede the common law altogether, and try to regulate all manner of things that were then done by a summary process; not, of course, to give arbitrary power like that which it is said an Oriental Sovereign has, to kill men with cause or without cause, but to enable the authorities to supersede the ordinary common law, and to try all manner of things by this summary process, in order that they might be summarily tried and punished, the great object being to stop the invasion or insurrection. This very arbitrary and great power was, I think, granted to the Governor by that statute.”

That is to say, a power in a *period of danger* to declare and exercise martial law against the *negroes*; if it should appear that the danger was one of a negro rebellion. And the learned judge went on to notice how all this was confirmed by the Act of 1845 :—

“And whereas the appearance of *public danger*, by invasion or otherwise, may, sometimes, make the imposition of martial law necessary, yet, as from experience of the miseries and calamities attending it, it must ever be considered as among the greatest evils, be it enacted, that it shall not in future be declared or imposed but by the opinion and advice of a council of war, consisting as aforesaid (including all the chief official persons in this Court). *That was the statute which was in force at the time Mr. Eyre succeeded to the Governorship.*

“Now comes the question—*What power was it that gave him?* I have pointed out to you that I think there can be no more doubt that the original Act of Charles II. was intended to give power to exercise martial law in the fullest sense; when it ceases, ‘the common law revives,’ is the very phrase that is used. And I find, as a fact, that there were numerous insurrections of slaves in the island, when vast numbers of things were done which perhaps could not be justified even under martial law, but which certainly could not be unless martial law existed to that extent.”

The learned judge it will have been observed had arrived at this clear conclusion, upon the broad ground, that the Legislature of the colony—a negro colony like Jamaica, in which the negroes were in an enormous and overwhelming majority—were well aware of the tremendous *danger* involved in a negro rebellion: a danger utterly unlike anything that could by possibility arise in this country, and therefore felt the importance of allowing a power which went, no doubt, far *beyond* the common

law power; viz., a power to exercise martial law in periods of *danger*. In this view, the learned judge struck, so to speak, the *key-note* to the whole case; and which had been marvellously missed by the Lord Chief Justice, who throughout his charge dealt with the subject as at common law, and as if it were the case of a mere English riot!

“I cannot doubt, when you read the words of the Act of Victoria, that what the Legislature of Jamaica were then thinking was, *that martial law in such a country as this* might be necessary, in the sense of superseding common law; but that it was necessary to put two checks upon it: that it should never be proclaimed or put in force without the full consent of the council of war, consisting of all the notables of the island; and that it should *ipso facto* cease at the end of thirty days unless the council of war should see fit to prolong it.” (Report, p. 80.)

That is to say, that if the Council thought it necessary by reason of *danger* of rebellion, or of *renewal* of rebellion, to keep up the exercise of martial law, the Governor was authorised to do so as long as he thought *danger* continued, and provided that it should not be *longer* than thirty days at a time without fresh sanction of the Council. It is obvious that upon such a view of the law, there could be no pretence for imputing any culpability to the Governor for maintaining martial law in operation *during* that period; provided that he and the Council were of opinion that the *danger* continued, and especially if it appeared to be an undoubted fact that all the *elements* of danger continued to exist: disaffection of the vast negro population, disposition to rebellion, preponderance of numbers, and disparity of military force. And such it will have been seen *was* the case. Upon the evidence, of course, there could be no question as to the declaration of martial law.

“I think, under these Acts of the Colonial Legislature, Governor Eyre in case of rebellion or *apprehended* rebellion, might, with the consent of the Council, have the power to declare martial law in the sense that it superseded the common law for the time being, and enabled all matters

to be tried by summary procedure, in the words of the Petition of Right, as is used by *armies in time of war*."

In other words, to exercise such military law as soldiers are liable to, not only in time of peace, but in time of war. The Lord Chief Justice, it will be remembered, so far agreed with this, that he thought martial law meant the application to rebels of such military law as is applicable to soldiers; only he thought that it was regular military law, in which he made the mistake of forgetting that in time of war, as he himself stated elsewhere, the Crown is absolute over its own soldiers, and therefore, military law is *irregular*. The difference, however, would not in the present case be material, because the courts-martial were constituted, though the Lord Chief Justice thought otherwise, according to *regular* military law, and the charge, even in Gordon's case, was in substance that of an offence capital by *regular* military law. (See sec. 15 of the Mutiny Act, which makes it a capital offence to incite men to sedition.) Thus, therefore, there was a complete concurrence between the Lord Chief Justice and Mr. Justice Blackburn upon this fundamental point, that martial law in time of rebellion was legal in the sense of the application of military law, and the only difference between them was, that the Lord Chief Justice had overlooked that by the local Act, it is equally legal in time of *apprehended* rebellion—that is, not only during the actual continuance of rebellion, but during the continuance of *danger of its renewal*. As to the *declaration* of martial law there could not, it is obvious, be any question. The only question was as to its *continuance*, which formed the subject of the next great head of charge, as to which the learned judge laid down that martial law might be properly continued *during danger* :—

"Then, secondly, when martial law had been proclaimed, Mr. Eyre might have stopped it before thirty days, but he allowed it to continue, and there, again, there arises another question. As to the first—Whether

he could properly proclaim martial law, I think there is not much doubt, under the circumstances, that *he would have been culpable* if he had *not proclaimed it*."

"But now comes the second question—Is he punishable for not having stopped it sooner? And that depends very much upon the *state of things as they appeared before him* and as they will appear to you. What did he do? As to that, I think, when we look at the Act of the Colonial Legislature, what they meant was that summary jurisdiction might continue so long as was *necessary to prevent the insurrection going on*. He was to try men fairly and properly, so far as could be done, but he might try them summarily, and, when it was necessary, where there was danger, in case he did not exercise such summary jurisdiction, that insurrection might spread, and the country be destroyed, then, I think, the Colonial Legislature gave the Governor power that he might do it. Then comes the question, and an important one—Had he such reasonable grounds as to lead him to think it right to continue it? and did he continue it, in fact, to such an excess and degree, and so much more than was necessary, and so far beyond it, that you would say a man exercising that reasonable moderation and firmness, which he ought to bring to the case, would have known that he should not do it, and must be blamed because he did do it? That raises the question of fact upon the part of the case."

And again:—

"The next is more serious, that he kept martial law up for thirty days, when, in fact, the actual armed insurrection had been stopped after the first day or two, and the question whether, if he kept it up to too great an extent, and in a manner in which he was not *authorised* to do, whether there was *criminal excess* in so doing, the question will be whether the facts in Mr. Eyre's knowledge were such as to make him criminally responsible for that excess. It is first for you to say if it was an excess; in fact, I am inclined to say so myself. Then you are to say whether it was such an excess, putting yourselves in Mr. Eyre's position, as to make him criminally responsible. You will consider that he had *statements from all parts of the country that they apprehended insurrection, and dreaded that it would spread through the country*, and that he had come to the conclusion that there was an organised conspiracy. I do not think the evidence leads me to the conclusion that that really was so, but I am far from saying that Mr. Eyre might not have honestly thought so."

Here the learned judge was in error. The Commissioners had reported that there *was* a conspiracy, and *one* which, although local in its origin, was calculated to *have* spread with singular rapidity.

"Then martial law had been already proclaimed, and the question came home to him, Shall I stop it, or not? If I stop it, and the country is exposed to the dreadful effects of the insurrection, I shall have done very great mischief. He would then be responsible for that mischief, and might, perhaps, be accused, and made criminally responsible for it. I think *the question whether he was to keep it up or not depends very much indeed upon the extent to which you think a man of firmness and calmness and moderation would really believe that unless the summary process of martial law was kept up there would be great danger in other places.* I have already told you that he would be *justified* in it if it was absolutely necessary for the purpose of stopping and suppressing the insurrection, but I do not think it would be, if it was not. Then you are to put yourselves in his position, and make all due allowance for his position, and do not make too much, but all due allowance, and say whether, under those circumstances, he did bring that amount of ordinary firmness, calmness, and moderation to the consideration of the question which he ought to have done, and, if he did act honestly in that way, whether his failure to act with the necessary degree of firmness and moderation was a failure to such an extent as to make it a criminal failure—an indefinite phrase, but one as to which you must bring your own common sense to bear." (Report, pp. 97, 98.)

In the above passages of the charge, the learned judge it is conceived hit what was the real point in the case, and which had been missed, more or less, by all who had gone before him; viz., the question of *reasonable apprehension of danger, with reference to the general condition and circumstances of the colony.*

The learned judge distinctly laid it down that the question of the culpability of the Governor for the *continuance* of martial law would mainly depend upon the appearance of *danger*, with reference to the *general condition* of the colony.

"*I think the question, whether he was to keep up martial law or not, depends very much indeed upon the extent to which you think a man of firmness and calmness and moderation would really believe that unless the summary process of martial law was kept up there would be great danger in other places.*"

Now this was the view which had been laid down by the Commissioners, who, upon the same question, the continuance of martial law, said:—

"*We know how much easier it is to decide this question after than before the event, and we are aware, too, that sometimes the success of the measures*

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adopted for the prevention of an evil, deprive the authors of these measures of the evidence they would otherwise have had of their necessity. We have endeavoured, therefore, to place ourselves, as far as is possible, in the position of the Governor and his advisers, at the time their determination was arrived at. From this time (the time when the leaders were executed) it must have been clear to all that the rising was put down, and that the only thing to be feared was simultaneous risings in other parts of the island. The question to be considered, in deciding upon the conduct of the Government, is not whether such risings were in fact likely to take place, but whether the Government, with the information then in their hands, had reasonable grounds for apprehending they might take place. It will be seen that they were receiving almost daily reports from different parts of the island, which must have led them to the conclusion that considerable danger of such risings existed. They could not, at the time, investigate, as we have done, the grounds on which these reports rested. And they would have incurred a serious responsibility, if with this information before them, they had thrown away the advantage of the terror which the very name of martial law is calculated to inspire."

And although the Commissioners went on to express an opinion that the Governor was wrong in keeping martial law in *continual operation* during the whole period, they merely treated it as a difference of judgment upon a matter of opinion, and not as involving any culpability; for culpability surely involves more than mere *difference* or even *error* of judgment. Because the Commissioners, long after the event, *differed* from the Governor, it did not by any means follow that he was wrong; still less did it follow, even if he were wrong, that he was *culpably* so, for either they had *worse* or *better* means of forming a judgment than he had. If worse, then probably he was right; if better, then how would it follow *that* he could be to *blame*, even if wrong? The Commissioners reported:—

"From this day, at any rate, there could have been no *necessity* for that promptitude in the execution of the law, which almost precluded a calm inquiry into each man's guilt or innocence. Directions might and ought to have been given that courts-martial should discontinue their sittings; and the prisoners in custody should then have been handed over for trial by the ordinary tribunals."

But this was only as to the *actual* necessity—not a word as to *apprehended* necessity, nor as to *reasonable appearances or apprehension of it*. Therefore these findings did not in the least impute the smallest possible *blame* to the Governor; for no man is expected to be infallible. As a matter of mere opinion, the Commissioners say they think there was not an *actual* necessity for the continuance of martial law. But, as the learned judge carefully pointed out, there is all the difference in the world between error of judgment, and culpability, and error does not necessarily involve *any* culpability, else it would be to confound fallibility with culpability. The learned judge said :—

“He would be *justified* in it, if it was *necessary* for the purpose of stopping the insurrection, but not if it was not so.”

That is, he would not be strictly justified, that is all. Then came the question of *culpability* :—

“*Then* you are to put yourselves in his position, and say whether, under the circumstances, there was a want of reasonable firmness and moderation ‘to such a degree as to be criminal.’”

Thus the learned judge clearly distinguishes between incorrectness of judgment and *culpability*, and indicates that the question of culpability—*i. e.*, of *any* culpability at all—only arises when it has been settled that there was an error of judgment. It is most important to remark this, because it has been all through hastily assumed that where the Governor was declared to have been *wrong* he was declared to have been *blameable*. A man may be wrong without being blameably wrong, still less criminal; and especially when the matter is in its nature one of mere opinion, necessarily dependent upon a vast variety of facts and circumstances, or rather of supposed facts and circumstances, the correctness of which, and of the inferences to be drawn from them, may be matter of endless dispute afterwards, after the event—when perhaps it may turn out that, to a great extent, they were erroneous, but upon

which the Governor *had to act on the moment* to the best of his judgment. Therefore it was that the learned judge was so careful to point out that the question was how matters presented themselves to Mr. Eyre's mind *at the time*, and what were the statements and representations made to him *then* when, he was called upon to *act*, and, as the Commissioners pointed out so candidly, had *not* time to investigate, and to sift, and to inquire. This was eminently true of the *continuance* of martial law, which was a matter to be determined upon by the opinion to be formed as to the general condition of the colony and the appearance or apprehension of danger arising from numerous circumstances—the apparent disposition of the negroes to renew the rebellion; the casual manifestations of disaffected feeling; the indications conveyed in local disturbances, or threats, or rumours of disturbances; the alarm entertained everywhere; the applications for military force; and the like. The learned judge observed upon all this, when he came to describe the evidence:—

“First, I will take what evidence has been brought before me. You know that a Royal Commission was sent out to Jamaica to inquire into all these matters, and this Commission had to examine all manner of witnesses, and generally every one who came they made them aware that they need not answer any questions that might criminate themselves, or state what would be evidence against them at a future time. Amongst others, the Commission had before them Mr. Eyre. Of course he was told this, but he scorned to take advantage of anything of the sort. He thought that he had been right. Of course you will not go upon what he thought, but what really he did. But he thought he was more to be praised and lauded for what he had done than punished, and he answered everything fairly, fully, and frankly. The first piece of evidence that we have, then, is what Mr. Eyre stated, and which will be brought before you. One word more as to the effect of the evidence. When a man makes a statement it is always, of course, evidence as against himself. You may always take a man's word in everything that makes against himself; but he is entitled, if you have any statement in evidence against him, to have the whole of what he states. If he says, I did so-and-so, but I did so because so-and-so, you cannot take a part against him without taking the part that makes for him. You are not of course bound to believe

that though a man may state perfectly truly every part against him—you need not always believe all the party says in his own favour is true, that will be a matter for you to consider. But I think, probably, you will come to the conclusion, from the frankness with which Mr. Eyre was speaking, that he believed he was speaking truly at the time."

This it may be observed was entirely in accordance with what the counsel for the prosecution had said of Mr. Eyre, that he had honestly and courageously avowed his acts, and assumed the entire responsibility for them; and a man who does that, of course may fairly enough be credited when he explains the grounds and reasons upon which he acted. It is to be observed that the learned judge was extremely careful to urge upon the grand jury their duty to read the *whole* of Mr. Eyre's evidence.

"Further than that, when a man says, I did do this or that, it is evidence against him. Then he proceeds, Such a man told me somebody else had done something:—that would be no evidence of that something else being done, because it would be merely repeating hearsay; but it becomes very important and material evidence (if you believe him to be stating truly) as to what was told him and what was present in his mind at the time. I wish to draw your attention to that distinction, because it is very important. *The whole question really comes to be putting yourselves in the position of Mr. Eyre, knowing all this that he was told, having all the information that was brought to him, what did he really believe and think at the time?* and would that justify the acts that he did? Therefore it becomes of the greatest importance to see what Mr. Eyre was told, what he heard, and what he thought, all that was done at the time, as bringing you to the question whether or no he was guilty of that want of calmness, prudence, and self-control, which as I have said he was bound to exercise, leading him to do those things which he might in a proper state of things have done to such an excess beyond what was right and proper as to make it criminal. You will have to consider *the whole that Mr. Eyre said* throughout that blue book containing Mr. Eyre's evidence."

The learned judge was exceedingly emphatic about this—

"I must give you a caution. You must read *all* Mr. Eyre's statement, and pay attention to it *all*. You must read *all* that Mr. Eyre said, and consider it *very carefully*."

This is the view which has been enforced throughout the present work—that the case should be looked at as a *whole*, and in particular those *important* portions of it, the

Governor's statements. From the first, this salutary rule had been too much disregarded and set at nought, and the case had been treated upon little *bits* and *scraps* of it, and especially upon little bits and scraps of the Governor's statements. If he wrote that the rebellion was subdued at a particular spot, where it first broke out, but *that it was ready to break out elsewhere*, the *first* part was quoted against him, without the rest, and it was said that by his own confession the danger was over. When it was evident, from other passages, that he had been speaking of the *outbreak* of the rebellion, it was represented that he was speaking of the *rebellion*, or when he spoke of rebellion, it was represented that he was speaking of *danger*, and admitted all danger to be over, whereas, to the last, he constantly and consistently represented that the *danger was imminent*. Well might the learned judge urge upon the grand jury to read the whole of what Mr. Eyre had stated, and well might they, having done so, throw out the bill. So much as to the *continuance* of martial law. The clear result of the direction was that there was no culpability.

Then as to the next great head of charge against Mr. Eyre—the neglect and absence of adequate *control* over the exercise of martial law, the learned judge ruled, as matter of law, that there *could* be no culpability because there was *no responsibility*, the matter being one of *military* authority. This has already been shown, and it is marvellous how it could have been overlooked. The whole outcry against Mr. Eyre had arisen from a vague, loose notion that, because he was Governor, therefore he must be taken to be responsible for everything done by everybody during martial law ! Very different was the sensible view taken upon this point by the learned judge :—

“There is always a great risk when martial law is proclaimed that there will be acts of oppression and tyranny unless it be very carefully looked at. Mr. Eyre put martial law in operation, and if this act were done it is an instance of the way in which a good many others were : in

consequence of martial law being in force terrible things were done. But I do not think you will charge Mr. Eyre with that. There is one thing I have considered a good deal in relation to some acts. When martial law is put in force in the sense of superseding the common law, and putting the summary proceedings in the hands of others, common sense would tell a man at once that it should be very carefully looked at. The Duke of Wellington, when he was examined before a committee, with the strong, shrewd common sense which he always possessed laid that down very strongly. He said, When martial law is proclaimed, and when you have superseded common law, martial law is really the will of the commander. That was the phrase—it has been very much criticised—and it does not become that quite, but it becomes the discretion of the person exercising it; and therefore, says the Duke of Wellington (I am quoting from memory), the person in command ought to take very great care to see that it is properly regulated and controlled, and give proper directions for it. I do not think that any one can doubt that this is very desirable, and I do not think in this you will have the slightest doubt, that owing to neglecting that, and letting persons run riot in the exercise of martial law, without having taken the proper control to see it rightly regulated, a vast number of things were done that ought not to have been done; and I thought then, before I knew what the charges brought were, can this be brought against Mr. Eyre as one of the charges against him? The Commissioners asked him the question, how came you not to do it? and he said, 'I always considered when martial law was proclaimed I had to leave it to the military officers?' And certainly there is difficulty in saying who was responsible for this. The difficulty of the thing is this, that the duty is divided among so many; that although somebody ought to look after it there is a great difficulty in saying whose legal duty it was. Consequently, upon that view of it, I think you could not say that the failure or neglect to take proper precaution to see that martial law was fairly exercised could be charged upon Mr. Eyre; and apparently those who conduct the prosecution have taken the same view, for they have not put any charge of that sort in the bill. They have put one charge under which it will be somewhat material for you to consider this, but that particular charge is not brought forward; and I think myself you will see that the fault there—the fault was really great—was in the legislature, in not, when it originally passed the Act, directing, that when the Governor in council did enforce martial law throughout the country, some one, the Governor probably, or the Commander-in-chief, should be responsible for seeing that the martial law was fairly and temperately exercised. It is a sort of oratorical phrase, but if you 'let loose the dogs of war' you should at least see that there is a huntsman to look after them. I think the fault was in the legislature; I do not think it is a criminal offence in Mr. Eyre, although it is very much to be lamented that it should have occurred."

Thus, then, upon this head of accusation, the learned

judge ruled as matter of law that there was no ground for it at all; that is, that there *could* be no *culpability*, because there was no *responsibility*, seeing that it was a matter of *military authority*. Nor was there the “difficulty” the learned judge seemed to imagine in the matter, for the Commissioners had had no difficulty in distinguishing the responsibilities of different parties. The Commander-in-chief was responsible for the non-issuing of proper directions to *the officers*, and it was his expression that they quoted, that he left all to their judgment, though the Secretary of State wrongly applied it to the *Governor*, and made it the ground of a censure! The officers would be liable for their orders to the men, and the private soldiers for their acts *without* orders. There was no difficulty, therefore. The learned judge proceeded :—

“Again, you have a witness who tells you the military were put in operation, and marched round to cut off the connection between the insurgents, when there was really no insurrection in action. You have a witness called who attended the military in their proceedings, and according to his account there was a most lamentable and terrible want of discipline, as he described it, in the way the troops marched, and shot down whom they met, for no reason except that they saw them. That shows a most lamentable want of discipline, certainly; but *as to that, I think the defence of Mr. Eyre is complete, that these things were to be regulated by the military.* He sent to the Commander-in-chief, ‘The troops must march to cut off the insurgents from getting into the other part of the island,’ but *I do not think you will say the civil officer, the Governor, is responsible for the faults of the military.* He would be if he had sent them when there was no need, or if he had sent them to do these things, but he is not responsible for their want of discipline.”

This is so obvious, in justice and common sense, that it is really wonderful it should have been *necessary* to lay it down; and it only shows to what dreadful lengths of injustice prejudice and excited feeling will carry men, that any one in their senses should ever have supposed it could be otherwise! Yet, for two years had this unhappy gentleman been assailed and reviled, not only in public speech and in public publications, but even in Parliament,

because, forsooth, he had "allowed" atrocities to be committed, which were committed for the most part by black soldiers in the absence of their officers, and without, or even against, orders, at places many miles distant from the capital, where Mr. Eyre was. In the name of common sense (it might be asked), if these officers could not control them, who were *with them*, how on earth could Mr. Eyre, who was at a distance? Passion and prejudice, however, are blind, and worse than blind—are animated by the most perverse *animosity* against their object, and cannot, or will not, see the plainest facts or the first principles of justice. And thus this unhappy gentleman had been for two years held up to obloquy before his country for atrocities of which he had never *heard* until long afterwards. The learned judge continued:—

"There is evidence to which I must call your attention, for the purpose of making you understand the value of it. The first evidence is that of a witness who went down to Morant Bay, was present during the earlier part, when martial law was in force, and he states what is not in the slightest degree in controversy, that martial law was then in force to a great extent, and that many persons were flogged and hanged. He mentions a most frightful story of a Mr. Ramsay, when causing a negro to be flogged under martial law, and seeing this man under a severe flogging, gnashing his teeth, and looking either in pain or anger at the Provost-marshal, who was conducting his punishment, and that Ramsay immediately ordered him to be taken on that ground, and no other, and at once hanged; and he was hanged. I need hardly tell you that if that was so, a more atrocious act could not be, but I must tell you also that I have looked carefully for the purpose of seeing—and there is not, throughout the whole of the evidence, the slightest evidence that Mr. Eyre ever heard of this, not only that he did not direct it to be done, but that he ever heard of it."

Yet no case had been made the subject of more violent declamation against Mr. Eyre than this, although the Blue Book disclosed that *when* he heard of it he at once suspended the Provost-marshal. So of another case:—

"Then you have one of the persons imprisoned by Mr. Eyre, and taken to Morant Bay for the purpose of being tried. He tells you a frightful

story of what was done to him—I allude to Phillips—about his being in prison for some time, and his being flogged. He was very severely flogged, so as to injure his health. Now, if that is so, that is a case of the most atrocious tyranny, and then, again, I say exactly as in the previous case of the man who was hanged, *I cannot find throughout the whole evidence that Mr. Eyre in any way whatever was made aware of this, or sanctioned it, or approved of it in any way.* There is this, that he entrusted the execution of this martial law to those who did the act in this most atrocious manner, if that be so, but *I do not know that Mr. Eyre is brought in connection with this matter at all.*” (Report, p. 51.)

Here the learned judge fell into an error, for the act was *not* done by those to whom Mr. Eyre had committed the execution of martial law, for it was not done by the *orders of the military commanders*; at least this did not appear; and it was *with them alone* Mr. Eyre had to do. He had nothing to do with the officers; they were not responsible to him, they did not report to him; he had no control over them in any way. The learned judge therefore here did some degree of injustice to Mr. Eyre, or rather a little over-stated the case against him, but it came to nothing, even upon this statement of the case, which only showed that the learned judge had not taken *too favourable* a view of the case.

Then came a very important matter—the only matter as to which the Governor was personally responsible—the charges made against the Governor as to the removal of several persons by his orders into the district under martial law, for the purpose of their being tried by martial law. As to the removal, the Governor would, of course, be responsible, but the learned judge laid it down that he would not be criminally liable for it if it was done honestly; nor would he be liable for the subsequent exercise of military power over the persons so removed.

“There is a third and a great question which I have had more doubt about, and that arises from this—when martial law had been proclaimed in this particular district, Mr. Eyre caused four or five different persons to be seized in parts of the island where martial law was not in force, and to be brought into the district where martial law was in force, in order

that they might be tried there for the offences which they were said to have committed. One of them, as you know, Gordon, was tried, convicted, and executed. The others were not tried; they were sent for the purpose of trial, and were detained there until martial law had expired, and were ultimately tried by the common law. Then comes the question, looking at these colonial Acts, and seeing that the men were in a district where martial law was not proclaimed, but where the courts of justice were open, and where they might have been perfectly well tried by the ordinary tribunals, only that there would have been some delay—could it have been a justifiable thing, under those Acts, for the Governor to remove them from the place where they might have been tried by the common law, into a place where martial law had superseded the common law, for the purpose of trying them by martial law—could that be justified at all? If I thought it so entirely beyond his powers that it never could be right, I should tell you at once that you must find a bill on that; but was it an act quite beyond his powers? or was it one which might, under proper facts, be justified, under the terms of the Acts of the Colonial Legislature? I have considered that question carefully, and I have come to the conclusion that, looking at what martial law was, the bringing of a person into the proclaimed district to be tried, *might* in a proper case be justified.”

It is important to observe that the learned judge laid this down generally, as a proposition of *law* applicable not merely to the case of Gordon, but to several others; and further, that the matter of law he laid down was, not that in the particular case the removal *was* justifiable, but that it *might* be; and whether or not it was so he left to the *grand jury* on the circumstances of the case.

This ruling was of immense importance with reference chiefly to the case of *Gordon*, who was tried, convicted, and executed, within the declared district, having been *removed* thither by order of the Governor, but not *tried* by his order. But the *principle* equally applied to the case of Phillips, who, having been thus removed, was *flogged*, while the others were only detained.

“Then comes the question, looking at these colonial Acts, and seeing that the men were in a district where martial law was not proclaimed, but where the courts of justice were open, and where they might have been perfectly tried by the ordinary tribunals, only that there would have been some delay—could it have been a justifiable thing, under those Acts, for the Governor to remove them from the place where they might have been

tried by the common law, into a place where martial law had superseded the common law, for the purpose of trying them by martial law—could that be justified at all? If I thought it never could be right, I should tell you at once that you must find a bill on that; was it an Act quite beyond his powers, or was it one which might, under proper facts, be justified under the terms of the Acts of the Colonial Legislature? I have considered that carefully myself with the best lights I could get upon the matter, and I have come to the conclusion that, *looking at what martial law was, the bringing of a person into the proclaimed district to be tried, might in a proper case be justified.* As a general rule of law all crime is local, and must be tried where it is committed. Exceptions are made in numerous statutes—as for instance, in this very case, we are now trying in the county of Middlesex, matters which occurred in Jamaica; but as a general rule, if a person is arrested in any part of the country for a crime alleged to have been committed in another place, he is regularly and generally sent to that place for the purpose of being tried there. When that place is under martial law, and the common law had been superseded, it becomes a question that should be very carefully and cautiously examined. One great reason for martial law, no doubt, and for summary jurisdiction instead of the common law, is the impracticability of having a tribunal regularly constituted when the rebellion is going on. You cannot have quarter sessions and assizes, they cannot even sit. There is an impracticability about it. And no doubt therefore the reason for martial law is to have a summary trial—of course observing all the *substantials* of justice, but so as to try men more speedily for the purpose of stamping out the rebellion. In such a case, therefore, it is important to put yourselves in the position of the Governor, and to see what were the facts and circumstances.” (Report, p. 84.)

So that the rule of law laid down by the learned judge was that the grand jury were to say in each of the cases whether the *removal*, which was all that Mr. Eyre was responsible for, (as he had ruled in the case of Phillips, the man who was flogged), was reasonably and honestly believed to be necessary for the suppression of the rebellion.

Such was the general ruling applicable to all the cases of removal: it was a general proposition of law that the removal might be justifiable if honestly deemed necessary for the suppression of the rebellion. Then the learned judge went on to apply the proposition with special reference to the more *serious* case, the case of the man who

when removed into the district, had been tried and executed :—

“ If the motive, the object, was the indirect and improper one, it would be an act of very great tyranny and oppression ; but if you come to the conclusion that it really was done honestly under the belief that the accused was really guilty, and not only really guilty, but that the conspiracy was an organised and extended one, and that there was very great danger and risk of the conspiracy breaking out throughout the country ; and that causing him to be tried and executed was an essential measure for stopping that insurrection, if you, think that, bringing a proper degree of calmness and fairness to bear upon that question, the Governor thought so ; then he would not be guilty upon this charge. The question is for you.”

That is, a charge of illegally and oppressively removing the man into the district.

The learned judge went on to apply the ruling more specifically to the most important case, that of Gordon :—

“ I think, therefore, when there was such a case as that of Gordon, which is the more important one to consider, what you have to do is to put yourselves in Mr. Eyre's position, to see what was the motive for it, and what were the circumstances and the facts. I think when you look at the evidence, you will not doubt Mr. Gordon had been—I hardly know what word to use—perhaps a pestilent firebrand, and using very violent language indeed, and being in close communication with those persons who actually murdered the custos, and the other persons—I do not think you will doubt that ; but I do not think there is any evidence that leads to the conclusion that he was more than that. I think he was a violent, pestilent agitator, that he used very improper and very seditious language, that he caused this insurrection ; but I do not think upon the evidence that he was a party to any organised conspiracy to cause an insurrection throughout the island. Such an insurrection might be very likely to break out if not checked. I think the evidence would not justify the conclusion that he was a party to it. I cannot doubt, however, on looking at the evidence, that there was a general belief in the island that he was so ; and certainly many of those around Mr. Eyre believed that he was so, and Mr. Eyre himself probably did believe it, and thought he was really guilty. Upon that the test comes to this : if you think Mr. Eyre thought Gordon ‘ is a fiery, pestilent, and seditious person, and did a great deal of mischief, and if I keep him here and try him by the common law and ordinary tribunals, the technicalities of the law, and one thing or another, will cause him to be acquitted, and that will be a bad thing, and therefore I will send him to Morant Bay, and cause him to be tried by martial law and get rid of him,’—if you think that he thought this, I am

bound to tell you that would be an act of grave and lawless tyranny and oppression, and a bill should be found at once ; but if you come to the conclusion that Mr. Eyre—and here you will have to put yourselves in his position, to see with his eyes, and hear with his ears, you will have, as far as possible, to bring before you that which was before him, and if you come to the conclusion that he thought there was a dangerous insurrection and conspiracy spreading throughout the island, likely to break into insurrection all through the island unless it was suppressed, and that it was really proper for suppressing it that Mr. Gordon, whom he believed to be the head, should be summarily tried—not with a view that he might be convicted, which in a regular trial he would not be, but because there was not time to wait, and it was necessary that the head of the insurrection should be punished promptly with a view to stop it—if you think that was the state of circumstances, I am not prepared to say that he might not be fully justified ; or indeed I rather think I ought to tell you that he would be excused, in acting under the powers which the colonial Legislature had given him, for that purpose, to that extent. And then comes the question of fact for you to determine, put yourselves, which is not an easy matter to do, but as far as you can, in the position in which Mr. Eyre was at the time this matter took place, and say first, whether in doing that it was a wrong act ? I have told you that I have come to the conclusion that he was mistaken. You may come to a different conclusion ; it is a matter of fact for you ; and if you come to the conclusion that he was right, there is an end of it : you would say there was no ground for charging him. Secondly, if you think he really honestly and *bond fide* acted not from any motive of getting rid of Mr. Gordon, but because he thought, though he was mistaken, that he was guilty, that his summary trial was necessary, then you would have to say, putting yourselves as far as you can in his circumstances, making great allowance for the position in which he was, and for his responsibility to the colony—not like us, quietly and coolly, years afterwards, debating and considering about the matter, but in a position responsible for the colony, and having everybody round him—for I think that appears to be quite clear—urging him on, and nobody holding him back, then you will consider whether under those circumstances there was that degree of want of care and reasonable calmness and moderation which I think a man in his position was bound to exercise, as would make him criminally responsible. It is a question of more or less. That is a difficult question, and one which I am sorry to leave to you with so little assistance, but I think that is the point for you to consider.”

And again, the learned judge put the question upon this case thus :—

“If the motive, the object, was the indirect and improper one, it would be an act of very great tyranny and oppression ; but if you come to the

conclusion that it really was done honestly under the belief that Mr. Gordon was really guilty, and not only really guilty, but that the conspiracy was an organised and extended one, and that at the time he did it there was very great danger and risk of the conspiracy breaking out throughout the country, and that causing him to be tried and executed was an essential measure for stopping that insurrection ; if you think that taking a proper degree of calmness and fairness to bear upon that question, he thought so, he would not be guilty upon this charge."

So as to the case of Phillips, the man who, after his removal into the *district under martial law*, was flogged by the military, without any authority from Mr. Eyre,—

"Then the same may be said with respect to each of the other cases of those who were taken out of the county. There is a distinct charge that Mr. Eyre caused two of them to be flogged. I do not see the evidence of one of them being flogged in a summary way. The other, Mr. Phillips, tells us the frightful story of what would be most improper, and tyrannical, and oppressive ; *but I have looked through the evidence in vain to see if Mr. Eyre sanctioned or authorised, or even knew of it.* He sent him to Morant Bay to be tried, and to be kept in custody, but *I cannot find that he directed these very wrongful proceedings to be done, and I cannot find, therefore, anything to make him responsible for that.*"

Of course the same ruling applied to the others, who were only *detained*,—

"The other three parties were brought into custody and detained, but not actually tried. They were sent for the purposes of trial, but not actually tried. The same thing actually applies to them, but I need hardly say their case is a far lighter one. If you come to the conclusion that Mr. Eyre was not guilty of criminal excess in causing Gordon to be actually tried and executed, you will probably come to the conclusion that there was no criminal excess in causing the others to be sent for trial. The same principle prevails, but that would be a much easier case to decide."

And then, finally, as to the general principle which governed culpability, the learned judge said :—

"The whole question really comes to be *putting yourselves in the position of Mr. Eyre*, knowing all this that he was told, having all the information that was brought to him—he would not, I dare say, believe everything that was brought to him—what did he really believe and think at the time ? and would that justify the acts that he did ? Therefore it becomes of the

greatest importance to see what Mr. Eyre was told, what he heard, and what he thought ; all that was done at the time ; as bringing you to the question whether or no he was guilty of that want of calmness, prudence, and self-control, which as I have said he was bound to exercise ; leading him to do those things which he might in a proper state of things have done, to such an excess beyond what was right and proper as to make it criminal."

In the course of the charge, the learned judge said :—

"I have taken every possible opportunity of consulting with any of my brother judges, and, as far as I could, got their advice and assistance upon it. Several of them have given me assistance here and there upon different points, and I think I may say *that most of those to whom I have spoken are agreed in all I have said.*"

He added, what made it plain that the above was spoken of the whole of the fifteen judges as a body :—

"I may state further, as to the judges of *my own Court*, the Lord Chief Justice, my brother Mellor, my brother Lush, and my brother Hannen, with whom I have communication every day, I have had much more frequent opportunity of consulting with them, and finally, yesterday, I stated to them the effect of what I am now stating to you, and they all approved of it, and authorised me to say (of course not relieving me from my responsibility, or absolutely binding them, for of course they have not considered it so thoroughly and so judicially as I have been obliged to do), still, they authorise me to say they agree in my view of the law, and thought it right."

This, of course, was intended, and understood to be intended, of matters of law *laid down*, as to which alone the learned judge had expressed any opinion at all. He had, however, of course, deemed it material upon the charge of *issuing an illegal proclamation*, to lay down whether it was legal or illegal, and he had laid down that it was legal. So also upon charges for allowing the exercise of martial law, he had, of course, deemed it material to lay down what martial law was, and that it involved military authority and the power of summary trial by such authority.

This passage, however, was afterwards taken advantage of by the Lord Chief Justice to make some observations tending to counteract the effect of the charge of Mr.

Justice Blackburn; and with reference to what followed, and also with a view to form a just estimate of the moral effect of the charge coupled with the finding of the grand jury, it is important here to make some remarks. It need hardly be stated that upon this charge the grand jury threw out the bill.

In order to appreciate the real effect and result of the charge, coupled with the finding of the grand jury, and also to appreciate what followed, it is necessary to observe and to bear in mind that the learned judge confined himself to his proper province and duty in matter of *law*, and although this, no doubt, included the rule or principle to be applied, the *ratio decidendi*, he left the *application* to them; *their* province being to apply the law to the facts, and to form their judgment upon the evidence as to what the facts were. Except as to matters of fact admitted and undisputed, *he* did not tell them the effect of the evidence; he did not tell them whether or not there was a reasonable belief of necessity, or whether, for example, the removal of Gordon and the other persons was or was not justifiable. He told them the rule of law as to what would *make* it justifiable or excusable, and left *them* to say whether it *was* so. But the Lord Chief Justice, usurping the function of the grand jury, had in the most violent terms stated his view of the effect of the facts, and in particular, as to Gordon's case, had declared his removal "unjustifiable," and had denounced Mr. Eyre extrajudicially in the strongest terms, founding his denunciation upon his own *view of the facts and on the suggestion of an improper motive!* All this has already been shown in the comments upon his charge; and it may be imagined that some reflection upon *his* conduct was implied in the charge of Mr. Justice Blackburn, which laid down distinctly that all this was not matter upon which the judge had any right to express any opinion at all, but was entirely for the jury. The implied effect of this, of course, was the most severe con-

demnation of the Lord Chief Justice, for having not only pronounced his opinion upon the matter, but for having founded upon it violent extrajudicial denunciations.

The unhappy Governor had been censured and recalled upon three grounds—the *continuance* of martial law, the *non-control* of martial law, and the removal of Gordon for trial under martial law, and the last was the matter on which the prejudice against him had been the strongest. The Lord Chief Justice had denounced him in the strongest terms for it, and had expressly founded his denunciation on an imputation of improper motive, utterly contrary to the evidence, and on which he had no right to express any opinion ; and he had equally denounced him for the continuance of martial law. Mr. Justice Blackburn told the grand jury, as to these matters, that it was for *them*, not for him, to pronounce an opinion ; that is, that it was not for the Lord Chief Justice to do so ; in other words, that the observations of the Lord Chief Justice on these matters were extrajudicial, and being very prejudicial to the accused, unlawful and unwarrantable. And the grand jury, upon their oaths, said that, in the continuance of martial law, and the removal of Gordon for trial, Mr. Eyre acted on honest and reasonable grounds ; while as to the non-control of martial law, the learned judge laid it down that Mr. Eyre was not only not culpable, but not responsible. The result of the finding and the direction therefore was, that Mr. Eyre, who had thus been denounced by the Lord Chief Justice, had incurred no serious culpability at all in respect of any of the matters laid to his charge.

It may easily be conceived that this must have been severely felt by the Lord Chief Justice, than whom there is no man upon the bench more sensitive as to what is due to justice, nor, ordinarily, more careful and scrupulous in its observance. Such a man would feel the implied reflection most keenly. Here had he been holding up a man to obloquy, upon his own view of the facts, when a

learned judge, one of his own coadjutors, judicially declared, in effect, that he had no right to express any opinion upon the facts, and a grand jury upon their oaths, had declared, in effect, that he had been utterly wrong in the opinion which he had thus extrajudicially, irregularly, and unwarrantably expressed. It would be impossible to imagine a more severe condemnation of a judge, and it is manifest that it was most severely felt. For about a week the Lord Chief Justice strove to endure it, but at last his sensitive feelings, perhaps stimulated by ill-advised suggestions, urged him to attempt some kind of vindication: but in which—unhappily—still forgetful of the distinction between matter of fact and matter of law, he appeared to be reiterating his attack upon the character of the unhappy Governor! Of course it was necessary to devise some excuse for this—and indeed in the first place, for the extraordinary course of speaking at all upon the case; for it was *gone*, at an end, finally and for ever dismissed; so that any remarks upon it, especially to the prejudice of the accused, would be in the last degree irregular, extrajudicial, scandalously, outrageously unjust, unless there was some ingenious excuse. The excuse suggested was, that Mr. Justice Blackburn had misunderstood the extent to which he had been authorised to say that the other judges of his court concurred with him in his view of the law. But if this had been the real and sole reason for the extrajudicial utterance, the object (as was at once observed by the bar) would have been far more easily, naturally, obviously, and effectually attained, by a few words from Mr. Justice Blackburn himself the next morning, when his charge appeared before the public at full length, with the statement in question. It must be presumed that, as the Lord Chief Justice came down to court and sat with his learned brother all that day, he must have mentioned to him the supposed misunderstanding; and the learned judge, it will

be seen, afterwards said himself that, "as soon as it was pointed out, he was anxious to correct it." Why was he not allowed to do so at once, in the easy, obvious, natural, effectual manner of an immediate explanation? Why was it that for a week nothing was said about it? Why was it that the Lord Chief Justice came out, not with a simple explanation of the mistake, but with an elaborate oration, in the course of which the opinions he had extrajudicially expressed upon the *facts*, were extrajudicially repeated? Besides, after all, it turned out from the statement of the Lord Chief Justice, that in the main ruling and governing direction, that the test of culpability was honest and reasonable belief, he concurred, and on the only matters of *law* on which he spoke, he only expressed *doubt*! It was hardly worth while to deliver an elaborate oration to express *doubt*; and the doubts of a judge, who, after two years for consideration, had not been able to make up his mind, could not weigh strongly against a clear, positive, decided exposition of the law; so *that* could hardly be the real object of the oration, which was betrayed, when the Lord Chief Justice went on skilfully to introduce his opinions upon the *facts*.

The Lord Chief Justice had no right to enter into *reasons* of dissent, but only to declare his non-assent. There was, however, after all, no real dissent from any law laid down by the learned judge. The law as laid down by Mr. Justice Blackburn came to this, that a Governor was not liable for the continuance of martial law if he honestly believed its continuance necessary, nor for its exercise or execution except so far as he *personally* directed it, nor for any acts personally directed by him in the course of its execution, if honestly deemed necessary. This was in substance confirmed by the Lord Chief Justice, who on account of some supposed misconception afterwards said:—

"There was a proposition of law which seemed to us sufficient for the guidance of the jury, and which we understood was to form (if I may so

express myself) the basis of the charge, on which proposition we were all agreed, namely, assuming that a Governor of a colony had, by virtue of authority delegated to him by the Crown, or conferred upon him by local legislation, the power to put martial law in force, all that could be required of him, so far as affects his responsibility in a court of criminal law, was that; in judging of the necessity which it is admitted on all hands affords the sole justification for resorting to martial law, either for putting this exceptional law in force or prolonging its duration, he should not only act with an honest intention to discharge a public duty, but should bring to the consideration of the course to be pursued, the careful, conscientious, and considerate judgment which may reasonably be expected from one invested with authority, and which, in our opinion, a Governor so circumstanced is bound to exercise before he places the Queen's subjects committed to his government beyond the pale of protection of the law. Having done this, he would not be liable for error of judgment, or still less for excesses or irregularities committed by subordinates whom he is under the necessity of employing, if committed without his sanction or knowledge. Furthermore, we consider that a Governor sworn to execute the laws of a colony, if advised by those competent to advise him that those laws justify him in proclaiming martial law in the manner in which Mr. Eyre understood it, cannot be held criminally responsible if the circumstances call for its exercise, and though it should afterwards turn out that the received opinion as to the law was erroneous. On the other hand, in the absence of such careful and conscientious exercise of judgment, mere honesty of intention would be no excuse for a reckless, precipitate, and inconsiderate exercise of so formidable a power, still less for any abuse of it in regard to the lives and persons of her Majesty's subjects, or in the application of immoderate severity in excess of what the exigencies of the occasion imperatively called for. Neither could the continuance of martial law be exercised, even as regards criminal responsibility, when the necessity which can alone justify it had ceased, by the entire suppression of all insurrection, either for the purpose of punishing those who were suspected of having been concerned in it, or of striking terror into the minds of men for the time to come."

To this extent the law laid down had the sanction and assent of the whole Court. Upon the two points, whether martial law meant martial law or *lex martialis*, and whether, if so, it was authorised, even by the statutes, the Chief Justice doubted and *only* doubted :—

"I differ, in the first place, from the learned judge in the conclusion at which he seems to have arrived, that martial law, in the modern acceptation of the term, was ever exercised in this country, at all events with any

pretence of legality, against civilians not taken in arms. The instance referred to is of a most doubtful character.

“In the second place, while I have never doubted that it was competent to the Legislature of Jamaica to confer upon the Governor the power to put martial law in force, I entertain, for reasons I have stated elsewhere, very great doubts whether the Jamaica statutes have any reference to martial law, except for the purpose of compelling the inhabitants of the island to military service, and subjecting them while engaged in it to military law. I abstain from expressing any positive opinion on so debateable a question, but I must at the same time say, that, in my judgment, there is too much doubt upon the subject to warrant a judge, in the absence of argument at the bar, and judicial decision, to direct a jury authoritatively that these statutes warrant the application of martial law. Nor does such a direction appear to me to be at all necessary, seeing that we are agreed that a Governor giving effect to these statutes in the sense in which they have been understood in the colony would not be criminally responsible.”

But who had ever heard of “argument at the bar,” in a charge to the grand jury, or of the notion that the law could not be clear and certain without judicial decision? It came to this, that as *he* was not clear as to the law, therefore his brother judge had no business to be so. But this was hard indeed, that his brother, who *knew* the law, was not to lay it down, because the Lord Chief Justice *doubted* about it, or that poor Mr. Eyre was to be vexed with a criminal prosecution in order to settle the doubts of the Lord Chief Justice!

The Lord Chief Justice insisted that it was not necessary for his learned brother to express any opinion as to the legality of martial law. This was natural enough, as it was a judgment entirely opposed to his own. And so he strove, very ingeniously, to make out that it was extrajudicial because not material. But as to its not being *material*, the Lord Chief Justice must have forgotten that one of the charges against the Governor was for issuing an *illegal* proclamation of martial law, and another was for allowing martial law to be carried out by summary trials and executions. So that the case distinctly and directly raised the question of the *legality* of martial law, and of its real *character*. These were matters of law which

were raised, and the Lord Chief Justice thought they were *not*, and then he went on to *question the finding of the grand jury upon matters of fact.*

“ But, above all, I dissent from the direction of my brother Blackburn as reported, in telling the grand jury that the removal of Mr. Gordon from Kingston into the proclaimed district for the purpose of subjecting him to martial law was legally justifiable. I emphatically repudiate the notion of sharing that opinion.”

No such proposition was laid down by the learned judge, nor was any such proposition reported. It would not have been a proposition of law; and the converse of it, stated by the Lord Chief Justice in Nelson's case, was not a proposition of law, but a mixed proposition of law and fact applied to the particular case, which would have been entirely for the grand jury, and which therefore would, on the part of the judge, be entirely extrajudicial and illegal. What the learned judge laid down, and what was reported, was, that the removal of a man into a district under martial law might be legal under proper circumstances, which he described, and left to the jury. This was a proposition of law, and it was laid down, not of Gordon's case only, but of four others. The Lord Chief Justice does not dispute it, nor lay down a counter proposition, that removal into a declared district must be illegal; but he only disputes the application of the proposition to a particular case, which he had no legal right to do.

It was *not* laid down as a matter of law, that the removal of Gordon for trial *was* legal and justifiable: it was laid down that it *might* be justifiable on the ground of a reasonable belief of its necessity, and that, *if* so, it would be legal; and whether it was so or not, was left to the grand jury, who found that it *was* so.

Therefore it was, in reality, *the finding of the grand jury* which the Lord Chief Justice was impugning! The grand jury had upon their oaths found that there was no criminal culpability in the act because it was reasonably deemed

necessary ; and the Lord Chief Justice, the case being over, comes forward with an extrajudicial declaration that, despite the finding of the grand jury, the act was unjustifiable! It is not too much to say, that this extrajudicial declaration was unjustifiable. The Lord Chief Justice went on to say that

“It may operate as a salutary warning to those who, being placed in authority, may proceed to exercise martial law, to know that an act such as the seizure of Mr. Gordon was, in the opinion of a majority of the judges of this court, altogether unjustifiable and illegal.”

But upon this it may be observed, with every respect, that the judges had no right to express any such opinion, and that it was entirely extrajudicial, and altogether unjustifiable. They did not venture to say that, as a matter of law, the removal into a district under martial law was illegal, which would be contrary to clear and undoubted law as held and declared by the twelve judges of England. They predicate it of a *particular* case, as to which the application of the law would be entirely a matter for the jury, and wholly beyond their legal province. In the absence of any inflexible universal rule, their opinion upon the particular case must turn upon the facts of that case, and the reasons and motives for the removal, which were entirely for the grand jury. Their expression of opinion, therefore, was extrajudicial, and of no authority whatever. The *former* expression of opinion by the Lord Chief Justice on the case, which was grounded on the suggestion of bad motive, was wholly unwarrantable, and his present repetition of it was still more so.

It has been seen that, as to matters of *law*, which were the proper province of the Lord Chief Justice, he gave the jury no directions, and left it to them, while he had usurped their province as to the matters of fact, and expressed the strongest opinion upon them. So upon the present occasion he said, after stating the direction he would have concurred in :—

"All that remained was to apply the law thus laid down to the facts and circumstances of the case ; on the one hand, to the formidable character of the insurrection, and the terrible consequences that might have ensued to the white population in the event of a rising of the negroes becoming general ; on the other hand, to the fact of the immediate suppression of the insurrection, and to the prolongation of martial law for several weeks after order and tranquillity had been perfectly restored, to the fearful number of executions that took place, and the terrible punishments which had been inflicted during this period ; leaving it to the jury to consider whether what had been done was what reason and humanity could justify."

This was the Lord Chief Justice's notion of "leaving the matter to the jury." This was the way he had charged the grand jury, telling them that the "insurrection was *over in a day !*" and then leaving them to consider whether what had been done "was consistent with reason and humanity !" So now he would have told the grand jury of "the *immediate* suppression of the insurrection," and the prolongation of martial law for *several weeks after order and tranquillity had been perfectly restored* (the evidence being that there was armed resistance in the field *ten days* after the outbreak, and that "order and tranquillity were not perfectly restored" even when martial law was terminated, at all events not more than just restored), and then leaving it to the jury to "consider whether what was done was consistent with what reason and humanity could justify !" As if it could possibly be so *upon such a statement of the facts !* or as if there were the slightest colour of pretence or excuse for such a statement of the facts, in defiance of the evidence, in the *face* of the judicial findings of the Commissioners ! And then the Lord Chief Justice desires it to be known that

"There are those who consider that a Governor or other authority, in putting martial law in force, or continuing it, or in the degree of severity exercised under it, is responsible to the law if he acts otherwise than under a sense of imperious and impending necessity, or without a due regard to what reason and humanity alike require."

As if anyone had ever doubted this, supposing a case in

which a Governor has acted with a grave degree of culpability, which would be a wilful and wanton, or careless and callous exercise of power. But what pretence was there for *saying* this, just after a grand jury had upon their oaths declared that there was no pretence for saying it of *him*? If it was meant merely as a general sentiment, it could answer no possible purpose save to acquire a little popularity on the score of superior humanity, as to which the Lord Chief Justice might have remembered Ceylon. If it was meant of *anybody*, it must have been meant of Mr. Eyre, who had just been declared by a grand jury *free* from any such imputation; and what right had the Lord Chief Justice of England to launch it at him again under the disguise of an insinuation? To do so seemed the only object, at all events the only effect, of the elaborate oration of the Lord Chief Justice; for any other object, at least any legitimate object, would have been easily answered by a correction from Mr. Justice Blackburn himself. The whole exhibition was extremely painful; and that the Lord Chief Justice should have hazarded it only showed how strong were the feelings under which he had delivered his charge, and how unfavourable they were to a calm judicial consideration of the case. In that view it is most important: and, for that reason alone, is reluctantly recorded.

Mr. Justice Blackburn, with perfect taste and great dignity, upheld his judicial independence and his entire correctness as to the matters of fact; while, with great delicacy, he suggested a protest against the hasty expression of opinion upon the facts, without an adequate study of the *whole* of the case, and drew the right distinction between matter of fact and matter of law, which the Lord Chief Justice so disastrously disregarded; and therefore had not understood his learned brother. For it was obvious that it was *his* misunderstanding; and that the misunderstanding had arisen from the confusion in his

mind between matter of fact and matter of law, which his learned brother so carefully distinguished :—

“I do not intend to make any observations whatever, either as to what was the direction I gave to the grand jury in this case, or as to the accuracy of that direction in point of law. I never intended to say that any one else was responsible in the least for the observations which, by way of affording assistance to the grand jury, I made on the evidence, to enable them to apply the law laid down to what they might find to be the facts. *No one can form any opinion on such matters without having studied the whole evidence, and the bearing of each part on the rest,* and I could not, and did not, ask anyone to undertake that very laborious task in the present case.”

Meaning that the other judges had not done so, and that therefore their opinion was not worth much ; which was quite true.

“With regard to the points of law the case is different ; I consider myself bound to direct the jury according to my own view of the law, but also bound to take every means in my power to secure that my view of the law should be a correct one. I need only say that with that object I read carefully the Lord Chief Justice's charge in the case of the Queen against Nelson and Brand. I came to the conclusion—it may be an erroneous one, but one which I still entertain—that there was no part on which it was necessary to give the grand jury a direction on which my opinion as to the law was in conflict with any direction contained in that charge.”

Meaning, no doubt, that, as already shown, there *was no distinct judicial direction in it at all.*

“When I had finally arranged my ideas, I stated to the Lord Chief Justice, and to my brother judges of the Court of Queen's Bench, the heads of what I proposed to lay before the grand jury as the law to guide them. The propositions which I considered the most important, namely, as to the principle on which criminal responsibility in a Governor or other officer charged with the duty of putting down an insurrection depended, I had reduced to writing. The others, applicable to the particular points in the case, I stated briefly, but, as I thought, sufficiently to explain them. They approved of what I stated, and the Lord Chief Justice said if I thought it would give more weight to what I was about to say, I might tell the grand jury that they did approve of them ; I was highly pleased, and not doubting that it would add very greatly to the weight of my direction as to what the law was, I did tell the grand jury.”

So that the learned judge distinctly adhered to his statement that he *had* stated the matters of law to his brethren, although they might not have understood him ; for which he gracefully took the blame upon himself :—

“I now perceive that I ought to have remembered that my mind was full of what I had been deliberating upon, and that though what I said seemed to me to be a full statement of what I was about to tell the jury, it by no means followed that it was understood as fully as I supposed and intended. I ought to have taken more care to ascertain that there was no misunderstanding as to this. Had this occurred to me in time, I should still have felt bound to deliver the same direction to the jury, telling them that it was what I considered the law, and therefore was to guide them, I alone being responsible for it, but that direction would have gone forth to the profession and the country as having no more weight than was to be attached to my own opinion, conscientiously, deliberately, and laboriously formed, but still mine only.”

The plain meaning of which, though couched in terms of exquisite courtesy, was, that he had *understood* what he was talking about, and they had *not*, which was the obvious fact ; as the discussion had made painfully manifest : for they had not even so far understood it as to see the distinction between what was matter of law and what was matter of fact in it. This would amply account for any amount of error and misconception. For there never was a case in which it was more essential to observe the distinction between matter of fact and matter of law ; or in which the failure to observe it would be certain to produce results most disastrous to justice. For the case on one side and the other was so extreme and exceptional that there was no chance of looking at it calmly and justly without settling the law before looking at the facts. This is what the Lord Chief Justice had *not* done, and so he went wrong. It is manifest that all through there had been, until now, an entire confusion between matter of fact and opinion, and matter of law. And it is important to bear in mind that matter of fact includes matter of opinion, which, therefore, it is for the public, represented by the jury, to judge of, and not for the

judges, who have only to determine matters of law. The Lord Chief Justice had forgotten this, and had indulged in denunciations of Mr. Eyre. Mr. Justice Blackburn left the question to the jury, and they absolved him.

Upon a comprehensive indictment comprising every charge that could possibly be concocted, and upon which they were directed that they must find a bill upon any one on which they thought that there had been any grave degree of culpability, they threw out the bill. No doubt this does not necessarily imply that they thought there was not, upon any matter, *any* culpability at all; still less that they thought his judgment infallible, and his conduct perfect. Nor is it useful or necessary to enter into that; for this, among other reasons, that it is too late, seeing that, rightly or wrongly, the unfortunate Governor has already undergone, in suspension, condemnation, and recall, an ample measure of punishment for any possible degree of culpability *short* of what could be considered "grave." Neither would it be useful to consider how far the finding of the grand jury—upon a sound exposition of the law, negating any grave culpability—can be fairly considered as a reversal of the judgment pronounced by the Secretary of State upon *mistaken* views of the law, because *that* also it is too late to consider, since the *recall* is beyond recall, and a Minister is not likely to revoke his censure. Moreover, considering all the circumstances, the view which has been here suggested, that upon a careful reconsideration of the case, the censure and recall will appear founded, to a great extent at all events, upon erroneous impressions of the facts or of the law, may be consistent with the view that, under all the circumstances, and especially considering the agitation which existed, the recall was demanded by a kind of political necessity, and therefore was justifiable, though not just. For it may be that the pressure of an hostile force may be so great as to leave no alternative except something worse; and it is

possible that the concession to popular feeling involved in the recall may have so far satisfied it as to save the Governor from the penal consequences to which the agitation was intended to lead. So that it may be that the recall, even although in itself unjust, may have been, on the whole, *rebus sic stantibus*, for the benefit of the Governor, leaving the door open, as it did, to *future* employment by the Crown, and *ultimate* restoration to its favour. But then, in *that* view, the result of the prosecution was most important. For, undoubtedly, the grand jury, on their oaths, negatived even a *prima facie* case of *grave* culpability on any one matter of charge alleged against the Governor.

It was natural that Mr. Eyre should regard the result of this prosecution as equivalent to a substantial acquittal, and so undoubtedly it was, and an acquittal by a judicial tribunal of all *grave* culpability. For the grand jury had been expressly and carefully directed by the learned judge that if, upon any one of the matters laid to his charge, they thought there had been any *grave* degree of culpability, even in the want of reasonable firmness or judgment, they must find a bill. And they threw out the bill altogether. What was this but a distinct declaration that, in their opinion, he had not been wanting, to any serious extent, even in sound judgment? And what was this but a moral acquittal? It was natural that Mr. Eyre should so regard it.

Shortly after the termination of the legal proceedings, Mr. Eyre addressed the following letter to the papers, dated June 2, 1868 :—

“Sir,—Confident in my own integrity, and believing that truth would ultimately prevail, I have submitted in silence to the malignant and monstrous calumnies and misrepresentations by which I have been so unscrupulously assailed during two years of unceasing and most rancorous persecution. Even whilst serious (however unfounded) criminal charges were pending against me, letters have been published in the newspapers misrepresenting my conduct, and speeches in Parliament have been re-

ported, misquoting the Report of the Royal Commissioners' proceedings, eminently calculated to prejudice the cases and to prejudice both the magistrates and grand jury against me. Uninfluenced, however, by these un-English proceedings, two different judicial tribunals, and now a jury of my fellow-countrymen, by refusing to entertain charges brought against me, have practically declared them to be unfounded.

"It is not my wish or intention to inflict upon you, or upon the public, any counter-statements of my own, but now that a competent judicial tribunal has pronounced its verdict (one which I am glad to believe will be endorsed and re-echoed by a large majority of my fellow-countrymen of all classes and politics), I ask you to allow me, through the columns of your widely-circulated journal, to make better known to the public some few passages from the Report of the Royal Commissioners, and some short extracts from a speech of Sir Peter Grant's, the present Governor of Jamaica; this last document being, I believe, scarcely, if at all, known to the general public, though it is most important, as showing the real nature of the circumstances with which I had to grapple in October and November, 1865. The Royal Commissioners, after investigating the occurrences of the rebellion from a legal point of view, at their leisure, and when all danger and the pressure of so great an emergency was over, reported that, in their opinion, 'the punishments inflicted were excessive,' and 'the punishment of death was unnecessarily frequent;' but they, at the same time, reported that, 'in the great majority of the cases the evidence (before the courts-martial) seems to have been unobjectionable in character and quite sufficient to justify the finding of the court;' that, 'with a full knowledge of all that has occurred, we (the Royal Commissioners) are nevertheless, also of opinion that, upon the information before them, and with the knowledge they possessed of the state and circumstances of the island, the council of war had good reason for the advice they gave (to proclaim martial law) and that the Governor was well justified in acting upon that advice;' that, 'not a few (of the negroes) contemplated the attainment of their ends by the death or expulsion of the white inhabitants of the island;' and, 'that though the original design for the overthrow of constituted authority was confined to a small portion of the parish of St. Thomas-in-the-East, yet that the disorder in fact spread with singular rapidity over an extensive tract of country, and that such was the state of excitement prevailing in other parts of the island, that had more than a momentary success been obtained by the insurgents, their ultimate overthrow would have been attended with a still more fearful loss of life and property.'

"Sir Peter Grant, the present Governor of Jamaica, in writing to the Right Hon. the Earl of Carnarvon on 9th October, 1866 (see further correspondence relative to Jamaica, May 28th, 1867), reported in reference to certain evidence taken before a special commission of oyer and terminer, held on and after Jan. 24, 1866, at Kingston, Jamaica:—

"'It appears to me that, as far as it goes, this judicial evidence is of

even greater value than any evidence which could be obtained by the Royal Commissioners in their admirably conducted inquiry.'

* * * * *

"Moreover, this trial, which was held according to all the rules of English law, and was presided over by a legal judge, was necessarily deliberate, regular, fair, and full ; giving the accused every reasonable facility of defence ; and was, therefore, necessarily such as to afford every ground of reasonable conviction as to the truth of the verdict.'

* * * * *

"The judicial evidence in this case proves that the march and attack upon the Court-house on the 11th October were premeditated, as part of an intended insurrection ; that there had been previous swearings in and drillings in or to this movement ; that the assailants were to a certain extent an organised body, having drum and flag, marching under previously appointed commanders, and capable of dividing into two and of advancing in two lines, under separate commanders, when it was so ordered ; that occasionally in the course of the evening a sort of attempt to use military words of command, such as 'Order arms,' 'Load,' were made ; and that the murder of certain persons who were murdered on that occasion was predetermined, was openly spoken of the day of before the occurrence amongst those engaged in the attack, and was boasted of afterwards by others so engaged. This evidence throws no light upon the cause which may have led to the conspiracy ; but it proves that the assailants proclaimed, upon making their attack, their object to be 'war ;' that the war announced was a war of colour ; and that they themselves understood, the day after the slaughter, that what they had undertaken was 'war.'

"To the brief but authoritative enunciation of the broad features of the rebellion, and its suppression, contained in the extracts I have given, I have only to add that though insurrection actually occurred in but one district of the colony (a very large one) the government had reason to fear, from numerous communications officially made to it by the custodes or others, up to dates comprehending the full period of martial law, that seditious feelings were rife, and that the negro population might at any moment break out into open rebellion in many other districts in the island ; and I would remind the public that during a state of warfare which open rebellion creates, and which cannot be regarded as terminated until all liability to the further outbreak of insurrection be over, many things must always take place which are to be deplored (and by none more than by the civil and military authorities in command at the time), but which it is as impossible to foresee as to prevent.

"E. FYRE."

The assailants of the Governor, however, could not permit him to retire without making one more effort to fasten upon him the imputations they had so persistently urged

against him. And, shortly afterwards, the following address to the Jamaica Committee, signed by the two members of Parliament who had appeared as prosecutors—one of them Mr. Mill, the chairman—appeared in the newspapers. As it was a species of final manifesto on the part of the Committee, as far as regarded criminal proceedings, it is thought right to give it *in extenso*, although, in doing so, it is necessary to make certain comments upon it, conceived, it is hoped, in a spirit of justice, of candour, and of courtesy. This general observation upon it must be made at the outset that, beginning, as it does, by complaining of misconception, there could hardly have been a more striking illustration of that system of sweeping misstatement which had characterised the publications of the Committee:—

“TO THE MEMBERS OF THE JAMAICA COMMITTEE.

“The attempt to call Mr. Eyre to account for his conduct as Governor of Jamaica, under the Colonial Governors Act, being at end, the grand jury of Middlesex having thrown out the bill, the Executive Committee are of opinion that the duty which they undertook of exhausting all the methods afforded by the criminal law of bringing the case under the cognizance of justice has now been performed.

“So much misconception has prevailed, and has been fostered by the language of those who were opposed to an inquiry, that it may be desirable to recall to mind the leading facts.

“A district in the island of Jamaica had been the scene of a disturbance, caused as it appears, in part, at least, by a system of misrule, under which (according to the testimony of the present Governor, Sir J. P. Grant), in minor criminal cases, those mainly affecting the people, the system of legal procedure was extremely bad, and in civil matters for the poorer classes there was no justice at all, while there was nothing worthy to be called a police. The disturbance, though sanguinary in its first outbreak, was suppressed without difficulty, no stand being ever made by the peasantry against the troops engaged in its suppression. The outbreak having occurred on October 11th, on the 20th the Governor reported, in a letter to the Colonial Secretary, that ‘the rebellion had been crushed.’ Nevertheless, for more than three weeks after this date, and even for many days after he had, on the 30th October, issued a proclamation of amnesty, declaring that the rebellion had been subdued—when all excuse of military necessity for summary proceedings was at an end, and every person sus-

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pected of complicity in the disturbance might have been brought before the regular courts of justice—he continued to license the shooting, hanging, and flogging of the peasantry, without distinction of sex, and the destruction of their houses and property, under the name and colour of martial law. According to the Report of the Royal Commissioners of Inquiry, 439 persons in all were put to death, not less than 600 were flogged, and 1000 houses were burned. For a whole month there was a reign of terror. At one place, on a single day, thirty men and twenty women were flogged; the men with cats twisted with piano wire, of which the Royal Commissioners of Inquiry, before whom portions of some of the cats were produced, say that it is painful to think that any man should have used such an instrument for the torturing of his fellow-creatures.”

It is not too much to say, in the words used by Mr. Eyre’s judicious attorney, Mr. Rose, in an able reply to the above, that—

“It is lamentable to find that there is scarcely a paragraph of their defence which is not either a misrepresentation of the facts, or a suppression of the truth.”

There is hardly a single statement which is correct, and which does not either state what is *not* the truth, or omits something which *is* the truth. Thus, for instance, in the last statement, “*At one place, on a single day,*” which implies that it was a specimen. The truth was, that it was the *only* place at which it happened. “He continued to license the shooting and flogging of the peasantry *without distinction of sex,*” the evidence being that only a few women were flogged, all without the knowledge of the Governor, and only one or two executed under extreme circumstances. In the language of the reply by Mr. Eyre’s attorney—

“The massacre of the magistrates, the clergy, the volunteers, and the whole of the authorities at Morant Bay, who were enclosed in the Court-house, which was then set fire to, and who had to choose between being burnt to death and having their throats cut, is called a ‘disturbance.’ Eighteen were murdered and thirty-one wounded. Fifty-one prisoners were released from the gaol, and pillage and arson succeeded. Messrs. Mill and Taylor allege that this massacre was a ‘disturbance’ caused by a bad system of legal procedure and want of police, and for this statement they quote a speech of Sir J. P. Grant, the present Governor of Jamaica. This speech I cannot find, but I do find that Sir J. P. Grant, in his de-

spatch published in a Parliamentary Blue Book, states that 'judicial evidence proves that the march and attack upon the Court-house on the 11th October, were premeditated as part of an intended insurrection.' And Sir J. P. Grant further states that the assailants were an organised body, drilled, having drum and flag, marching under previously appointed commanders, and that the murder of certain persons who were murdered on that occasion was predetermined, was openly spoken of before the day of the occurrence amongst those engaged in the attack, and was boasted of afterwards by others so engaged. Sir J. P. Grant adds these emphatic words: 'The evidence proves that the assailants proclaimed, upon making their attack, their object to be 'war,' that the war announced was a war of colour, and that they themselves understood the day after the slaughter that what they had undertaken was war.'"

So Mr. Rose well exposed the wretched pettifogging species of misquotation of Mr. Eyre's despatches, which had been resorted to on this as on so many other occasions.

"Messrs. Mill and Taylor reiterate that the Governor reported on the 20th October, 1865, that the rebellion had been crushed. They suppress most important parts of Mr. Eyre's despatches, from which even the extract they do make is inaccurately quoted. Mr. Eyre, in his despatch, states that 'by the rapidity of our movements we got ahead of the rebellion.' He mentions numerous places where outbreaks were apprehended, and speaks of the evil spirit which evidently pervaded a large portion of the peasantry, and adds, 'It is my duty to state most unequivocally my opinion that Jamaica has been, and to a certain extent still is, in the greatest jeopardy;' and that 'disaffection and disloyalty still existed in nearly all the parishes of the island; and had there been the least hesitation or delay, I confidently believe that insurrection would have been universal throughout the entire island, and that either the colony would have been lost to the mother country, or an almost interminable war and an unknown expense have had to be incurred in suppressing it.' There are stronger passages in other despatches of Mr. Eyre, showing the danger and jeopardy Jamaica was in; but it is unnecessary to quote further."

Mr. Rose gave an able summary of the facts as to the disturbance:—

"Just previous to the awful occurrences at Morant Bay, six policemen and three rural constables were employed there for the execution of some warrants. That force was overpowered, and three of the policemen made prisoners, on two of whom the negroes placed handcuffs. After the massacre at Morant Bay the negroes dispersed in all directions, over the dis-

trict of Surrey, comprising nearly one-third of the island, committing murders, and plundering the plantations and houses of the proprietors, from which the white population fled for their lives into the bush or on board ship. Several ships were cruising round the coast filled with men, women, and children, who passed days and nights of horror at sea, for there was a strong head wind blowing, and no one had made provision for the disaster which had overtaken them. Messrs. Mill and Taylor quote the charge of the Lord Chief Justice repeatedly when it suits their purpose, and it is a pity they did not give his account of the insurrection which followed the horrors enacted at Morant Bay. I quote from the report of the charge of the Lord Chief Justice given in the *Morning Star* :—

“ ‘This state of things spread itself very rapidly, and lives were taken and property destroyed by the negroes, who made no secret of their intentions, and threatened to destroy the white population—at least the male portion of it—and expressed their determination to seize and take possession of the whole of the property of the island.’

“ ‘Every one knows that the Maroons ultimately gave most efficient aid in apprehending the ringleaders and suppressing the rebellion, and as bush-fighters their services were invaluable ; but what the Maroons would have done had the rebellion temporarily succeeded, is scarcely a matter of doubt. There is considerable evidence, even in the Report of the Commissioners, to show that the negroes relied on the assistance of the Maroons. The following is one of the proclamations issued by the leaders of the rebellion, copies of which were found :—

“ ‘Skin for skin.—The white people send a proclamation to the Governor to make war against us, which we all must put our shoulder to the wheels and pull together. The Maroons sent the proclamation to us to meet them at Hayfield at once, without delay, that they will put us in a way how to act. Every one of you must leave your house, takes your guns, who don't have guns, take your cutlasses down at once. Blow your shells, roal your drums, house to house, take out every man, march them down to the Stoney Gut, and that you finds in the way takes them down, with there arms ; war is at us, my black skin, war is at hand from to-day to to-morrow. Every black man must turn at once.’ ”

This address from the leaders of the insurrection was in circulation, and they were at large, urging the negroes to continue their revolts, ten days after the outbreak, when Gordon was executed. So as to the executions which the Jamaica Committee represented to have been executions of innocent persons, for they say not a word as to their guilt or criminality, or of the necessity for deterrent measures. They mention the “reign of terror,” under

martial law, but say nothing of the "reign of terror" caused by the insurrection and the massacre, nor of the *number of those who took part* in the rebellion. Mr. Rose says :—

"Messrs. Mill and Taylor refer to the number of persons who were executed, inferring that they were all unjustly condemned, but they do not give the slightest indication that the Report of the Commissioners contains this sentence :—

"We have carefully read the notes of the evidence given before the different courts, upon which notes the confirmations of the sentences were pronounced. In the great majority of the cases the evidence seems to have been unobjectionable in character and quite sufficient to justify the finding of the Court. It is right also to state that the account given by the more trustworthy witnesses as to the manner and deportment of the members of the Court was decidedly favourable."

"And with regard to the numbers executed, what is the fact? Why, nearly twelve months after the rebellion a great number of persons who had escaped punishment under martial law were convicted by civil tribunals of heinous crimes committed during the rebellion. Lord Carnarvon had a desire to get the sentences commuted of the prisoners convicted by civil tribunals of crimes committed at and subsequent to the massacre of Morant Bay, several of whom had committed murder. One of them boasted that he had murdered Baron Ketelholdt. Sir J. P. Grant says :—'I think it probable that this man's hand caused the death, and certain that he took a chief part in that murder.' In the despatch of Sir J. P. Grant, of the 6th of October, 1866, the Governor gives a categorical account of the cases of upwards of thirty prisoners who had been convicted, and whose sentences he declined to remit."

The next paragraph of the manifesto deserves particular consideration, as affording a striking illustration of the tactics pursued by the Committee, and the one-sidedness and unfairness which characterised all their publications :

"Persons were tried and put to death under martial law for acts done, and even for words spoken, before the proclamation of martial law. A peasant, named Samuel Clark, was hanged some days after the proclamation of amnesty, for words spoken two months before the proclamation of martial law, his only specific offence being that he had, at that time, declared with an oath that a letter signed by the Secretary of State for the Colonies was a lie."

There may be some amount of literal truth in the

general statement; but then it is incomplete and unfair, without adding that these instances were few and exceptional, and that even in those which occurred, the convictions were really upon the ground of a belief—right or wrong—that the acts or words *had conduced to the rebellion*; and assuming that to have been so, the objection assumes a form extremely strict and technical, and admits of an answer equally valid—viz., that the question of martial law dates really from the rise of the rebellion, and not from the formal proclamation, which is only the notification of it.

With regard to the case of Clark, it is one of the few specified by the Commissioners, out of 354, as cases in which the evidence appearing on the face of the proceedings was deemed insufficient to sustain the finding. But the Commissioners had the candour and fairness to add, that, even in these cases, there may have been other evidence *not* appearing on the face of the proceedings, and that, even if there were not, it by no means necessarily followed that the parties were *innocent*, for that in one case the guilt was actually proved before them. The reader will not fail to remark the contrast between the calm, careful, judicial findings of the Commissioners, and the heated and inflammatory statement of the Committee, even assuming it to be well founded in point of *fact*. But how far it was otherwise, the reader will be able to judge when the substance of the particular case alluded to is stated from the Appendix to the Report. It there appears that the charge against Clark was *not* merely that above stated, but—

“That he had said that *if the people had not their grievances redressed there must be a fight for it, and bloodshed.*”

And so far from the evidence being only as to words “spoken two months before the proclamation of martial law,” the evidence was that they were spoken only twelve

days before the outbreak ! And further, there was evidence that the man had spoken, not only the words above stated, but other words distinctly threatening the slaughter of two different persons obnoxious to him. As to one, he said :—

“The people will show him what we can do ! It will not long continue.”

And as to another, he said :—

“He will very soon repent what he has done ! *He shall lick the dust for writing against the negro.*”

Language precisely similar to that which had been uttered by some of the leading insurgents, as to some of the victims of the massacre. Such is the case as it appears in the Minutes of Evidence, reported by the Commissioners. They may have been right in their view as to the insufficiency of the evidence, but, probably, most persons will think that, considering all the circumstances, they were right in abstaining from imputing any serious culpability to the officers who sat on the court-martial, and who, no doubt, honestly believed in the man's complicity in the rebellion. But what is to be thought of the course taken by the Committee in putting forth such a statement of the case, *suppressing all the material facts*, and then stating it as a *charge against Mr. Eyre, the Governor*, who had nothing on earth to do with it ! Such is a specimen of the course pursued by the Committee.

The Jamaica Committee continue their statement—

“The case of the Hon. G. W. Gordon was, in its constitutional aspect, still more grave. A member of the Legislature of Jamaica, and a leading opponent of the government of Mr. Eyre, he was taken by the Governor himself out of the protection of the common law, carried into the proclaimed district, handed over to a so-called court-martial, presided over by Lieutenant Brand, of whose fitness to sit as judge in a case of life or death the public has since had sufficient means of forming an opinion, and put to death, with the express sanction of Mr. Eyre ; to whom the sentence had been specially submitted, with an intimation from the commanding officer,

General Nelson, that there was no military necessity for a summary execution ; and this on evidence which the Royal Commissioners pronounce to have been wholly insufficient to support the charge, and which is characterised by the Lord Chief Justice of the Queen's Bench, not only as legally 'inadmissible before any properly constituted tribunal,' but as 'morally worthless.' 'No one, I think,' says the same authority, 'who has the faintest idea of what the administration of justice involves could deem the proceedings on this trial consistent with justice, or, to use a homely phrase, with that fair play which is the right of the commonest criminal.' 'All I can say,' proceeds the Lord Chief Justice, 'is that if, on martial law being proclaimed, a man can lawfully be thus tried, condemned, and sacrificed, such a state of things is a scandal and reproach to the institutions of this great and free country ; and, as a minister of justice, profoundly imbued with a sense of what is due to the first and greatest of earthly obligations, I enter my solemn and emphatic protest against the lives of men being thus dealt with in the time to come.'"

The Jamaica Committee were, of course, fairly entitled to make use of anything in favour of their views to be found in a publication, professedly put forth by the Lord Chief Justice, "with all the weight of authority which belongs to his office"; but respect for that office itself, obliges the author to say that it was happily not in the legal *power* of the Lord Chief Justice to lend the weight and authority which belong to it to such extrajudicial statements. *A judge can speak as a judge, only on the bench, and in the discharge of judicial duty*; and that duty is confined, on those occasions, to *matters of law*. Even when upon the bench, therefore, nothing said by a judge has the least judicial authority, unless it is said in the discharge of that judicial duty; and an expression of opinion on the facts and merits which are for the jury, is entirely extrajudicial, and without any authority at all. And, *a multo fortiori*, a publication by him cannot possibly have any judicial authority; and, on the contrary, the fact that he should strive to give it a judicial authority, which does not rightly belong to it, shows the presence of some unusual feeling, which would deteriorate from the authority even of anything really said as judge, and destroys altogether the force of anything said by the individual.

The Jamaica Committee, however, are not to be blamed for the publications of the Lord Chief Justice, but they may be reproached for misrepresentations of their own. Not even the mortification of defeat can excuse their statement, that Col. Nelson said there was no military necessity for a summary execution. What he said was, that there was no military necessity for an instant execution—i.e., on the *Sunday*; and the Committee did not show much candour in suppressing all mention of the opinion of the Commander-in-chief, that the circumstances of the colony called for prompt and decided action in the case—i.e., for a *prompt*, though not absolutely *instant* execution.

And even assuming that view to have been incorrect and mistaken, it would be a great want of candour to forget what the Lord Chief Justice with so much candour stated in his charge:—

“Mr. Gordon was generally believed by the authorities and by the white population to have been the instigator of the rebellion, and to be an accomplice with those who were actually engaged in it. It was therefore *thought* right and necessary to make Mr. Gordon answerable for the offences of which *it was believed* he had been guilty.” (Charge, p. 7.)

And had the Jamaica Committee contented themselves with the vindication of Gordon, without making cruel imputations upon the authorities, who, even if they acted erroneously, acted honestly in his execution, and under the honest and reasonable belief that it was just and necessary, they would have won far more of public sympathy. Nevertheless, it would be most unfair, uncandid, and unjust to them to forget or fail to acknowledge that the case was an extreme one, and calculated to produce a most painful shock to the feelings of those who, if they had not personally known the unhappy man, certainly knew many who had known him, and who suddenly heard of his summary execution with natural feelings of horror, and were as naturally slow and reluctant to realise its necessity. No one of any candour can fail to acknowledge the gravity

of these events, or their natural tendency to excite horror, indignation, and animosity. The Jamaica Committee continued :—

“The gravity of these events, in a constitutional point of view, and the necessity of bringing the case before a legal tribunal in the interest of public liberty and justice, were enhanced by the language of certain classes and of certain journalists in this country, who applauded the arbitrary violence of Mr. Eyre ; by the publications of legal writers, the advocates of prerogative, who took occasion to uphold martial law as exemplified in the acts of the Governor and his subordinates in Jamaica (and notably in the trial and execution of Mr. Gordon), putting forth doctrines which the Lord Chief Justice denounces as ‘dangerous and pernicious,’ and of which he says that ‘he almost shuddered when he read them ;’ and, above all, by the attitude of the Ministers of the Crown, one of whom, when questioned on the subject in Parliament, maintained, in effect, that martial law, when proclaimed, exempted those assuming to act under it from responsibility for their actions, however criminal and oppressive, to the laws and legal tribunals of the land, while his colleague defended the execution of Mr. Gordon, without reference to legality, as ‘practically just.’”

But it would have been more candid in the Committee to have admitted that their most powerful motive was in their feelings of horror, indignation, and animosity on account of Gordon’s execution, which the event was so naturally calculated to inspire. As to the doctrines put forth, there could be no new occasion for protest against them, seeing that they had been put forth by the *Lord Chief Justice himself* fifteen years before ; and as to the attitude of the Minister of the Crown, why he only adopted and adhered to the law which had then been laid down by the Lord Chief Justice, when Attorney-General, and by his colleague, the Judge Advocate-General, and *affirmed by a vote of the House of Commons*. Moreover, as to the statement that Mr. Disraeli maintained *in effect* that martial law, when proclaimed, exempted those assuming to act under it from responsibility for their actions, however criminal and oppressive, it is utterly unfounded, and directly contrary to the published words of the Minister. Nothing of the kind was ever maintained, either by him or

by anybody else; and what was maintained was, that which had been laid down by the law officers of the preceding Government, the Government of Lord Russell, that acts done under military orders were legal, and that the orders would be justified if *given honestly* for the purpose of suppression of the rebellion. Such was the law laid down by Mr. Cardwell, on the authority of Sir Roundell Palmer, Sir R. Collier, and Mr. Hannen (now Mr. Justice Hannen), and *that* was the law adhered to by Mr. Disraeli, in opposition to the monstrous notion of the Jamaica Committee, that men acting honestly in the suppression of rebellion, were liable to be hanged for any error of judgment! The readers of the debate, as abstracted in the previous portion of this work, will have no difficulty in appreciating the truth of this statement. And as to Mr. Adderley's statement, that it was by no means made out that the execution of Gordon was not just, it has been already abundantly shown that it *was* so, upon the authority of the Lord Chief Justice himself, and that his impression to the contrary merely arose from misconception as to the whole matter. What Mr. Disraeli and Mr. Adderley really said on the occasion alluded to, can be seen on a reference to the account of the debate in a previous portion of this work.

As to the phrase about "taking the man out of the protection of the common law," it is mere nonsense, upon the view of the Committee themselves, for their view is, that he was *not* taken out of the protection of the common law, as of course he was not, if martial law was, as they insisted, invalid; nor, indeed, was he so, even if it were valid, for the common law still protected him in the sense that it would hold his trial illegal, unless he had caused or committed acts within the district connected with the rebellion, and of course this would be so if he had *caused* it. The fallacy that he was taken out of the protection of the common law, arose from the vulgar error, of which a

lawyer ought to be ashamed, that the man became any more *liable* to martial law because taken into the district, than he was before, his liability depending upon his having had to do with causing the rebellion there. The Committee continue :—

“ Acting, as they have acted throughout, under the legal guidance of counsel at once eminent and dispassionate, the Executive Committee proceeded to try the question whether an officer of the Crown, who had illegally taken the life of a British subject, was or was not responsible to the law. This was done by proceeding at common law against Mr. Eyre and his subordinates, General Nelson and Lieutenant Brand, for the illegal execution of Mr. Gordon. The subordinates were committed for trial by Sir Thomas Henry, the chief magistrate of the metropolitan district, but the grand jury of London threw out the bill. Mr. Eyre himself, acting, as was stated, under the advice of his committee, had retired into Shropshire, where he was under the jurisdiction of the county magistrates, who, upon application being made to them, refused to commit him for trial. The case against Mr. Eyre was now laid in its completeness before the Attorney-General, that the investigation, which the Shropshire justices of the peace refused, might, under his authority and on his motion, be obtained ; but the Attorney-General declined to act. Much time was next spent in endeavouring to bring Mr. Eyre, who had left Shropshire, but whose movements the solicitor of the committee found great difficulty in tracing, before a magistrate legally educated, and upon whose impartiality reliance could be placed. When, at length, this was effected, the magistrate refused to commit, on the technical ground that General Nelson and Lieutenant Brand were the principals in the execution of Mr. Gordon, while Mr. Eyre was only an accessory, and that the bill against the principals having been thrown out by the grand jury, the accessory ought not to be committed on that charge. Thus baffled by the forms of law, the Executive Committee made a final attempt, under the advice of their counsel, to bring the case before a jury under the Colonial Governors Act. Under that Act the magistrate, after first seeking the direction of the Court of Queen's Bench as to his jurisdiction in the matter, committed Mr. Eyre for trial ; but the grand jury of Middlesex threw out the bill.”

But historic truth requires that the author should here remind his readers of what he has already shown in his comments on the prosecutions, that the prosecutions were not so conducted as to conduce to a fair trial of the question of legality, nor even of culpability ; for, as to legality, the question was embarrassed by allegations of

abuse and oppression in the particular case, and as to culpability, which depended upon a large and liberal consideration of the *whole* of the facts, this was rendered entirely impossible by the scheme and form of the prosecutions, which were based on so narrow a view as to exclude all the more important facts on which alone the measures impugned had been or could be vindicated.

No doubt this was not through any intentional unfairness, and arose from an erroneous view of the law, and also an utterly wrong idea of the facts; but it *was* so; and it obviously operated so unjustly towards the accused that it had more to do with the failure of the prosecution than anything else. The unfortunate sneer at the county magistrates who dismissed the charge of murder against Mr. Eyre naturally provoked his attorney, Mr. Rose, to say in his reply—

“It is next stated by Mr. Mill and Mr. Taylor that much time was spent in endeavouring to bring Mr. Eyre ‘before a magistrate legally educated, and upon whose impartiality reliance could be placed.’ It seems comical to think that Mr. Mill and Mr. Taylor’s ideal of impartiality in a magistrate should be relationship to Mr. John Bright, Mr. Bright being one of the most violent members of the Jamaica Committee, who had used the strongest language with reference to Mr. Eyre, and who had compared Gordon to the martyr Stephen.”

But in quoting this, as a natural retort to an imprudent insinuation, the author desires to disclaim any imputation upon Mr. Vaughan, the magistrate alluded to, who, no doubt, acted according to his honest view; as he is sure Mr. Bright himself would have done had the case come before him as a magistrate, only that gifted man would no doubt smile at the idea of his being exactly the most impartial person who could be selected. There was a matter personal to Mr. Eyre in the above passage, as to which it is only fitting to let his attorney speak on his behalf. Mr. Rose wrote:—

“There is one other complaint of Mr. Mill and Mr. Taylor, that Mr.

Eyre was not advised to take his trial with General Nelson and Lieutenant Brand. This notable scheme intended to prevent Mr. Eyre having the benefit of the evidence of Colonel Nelson and Lieutenant Brand. Even that would not have affected Mr. Eyre's decision to come to London and join them, but it was strongly, and finally successfully, urged upon him that the effect of his being influenced by the taunts and abuse of the Jamaica Committee, would also be to prevent Colonel Nelson and Lieutenant Brand having the benefit of Mr. Eyre's evidence. The Jamaica Committee were not so anxious about justice but that they were willing to avail themselves of the technicality of legal proceedings by which justice would have been absolutely prohibited ; and these philosophers make it a matter of personal grievance that Mr. Eyre did not go out of his way to give effect to a well-known Old Bailey device, of joining all the parties in an indictment to prevent any of them giving evidence the one for the other."

There was a certain asperity in the tone of Mr. Eyre's attorney extremely natural when writing to defend an absent client from unmerited censure and sarcasm, and it is enough to point out, that beyond all doubt, the advice to Mr. Eyre not to come to London, so as to allow himself to be joined with the military officers in one indictment, was sensible and just, not only as regards him but as regards *them*, since the result would have been to deprive them of his evidence in the event of a trial.

The Committee proceeded to vindicate the legal proceedings which they had adopted ; and as they allude, it will be seen, to "the instructions they had given to their legal representatives in Jamaica," it may be proper to insert here the principal paragraph in those instructions conveyed in a letter from their able solicitor, Mr. Shaen :—

"The Committee has been formed *only* because its members, judging from the reports that have been furnished by the late Governor, believe that in reference to the recent disturbances in the island of Jamaica, the *Governor* has been guilty of acts of illegality and cruelty, resulting in the killing and torturing of hundreds of our fellow subjects." (Jamaica Papers, No. I., p. 80.)

And again :

"For the purposes of the inquiry, it is necessary to consider that *Governor Eyre and his subordinate officers* may have to be put upon

their trial for acts of illegality and cruelty, in all probability amounting to murder."

So that, according to the instructions issued by the Committee, the labours of their legal representatives were to be directed chiefly to the prosecution of the Governor for acts of cruelty and illegality, and it was assumed that any which had been committed were committed by "his subordinate officers," whereas he had no "officers" at all, and the officers who carried out martial law were not responsible to him, but to the Commander-in-chief. The present manifesto proceeded:—

"In accordance with their pledge, and in consistency with the instructions given by them to their legal representatives in Jamaica, the Executive Committee have abstained from calling in question any act done by an officer of the Crown in the suppression of insurrection. They have confined the proceedings to acts done after the insurrection had, in the recorded opinion of the Governor himself, been put down, and when, in the judgment of his chief military subordinate, the military necessity was at an end."

There is no such "pledge," so far as the author is aware, in the published letter of instructions above quoted; nor, if there were, would it come to more than this, that the prosecutions were to be conducted upon the view taken by the Committee, that the outbreak was the rebellion, and that, therefore, after the cessation of the outbreak, there was an end of rebellion and of danger; a view which it has been abundantly shown was entirely erroneous. In the reference made to the recorded opinion of the Governor, "that the insurrection had been put down," the Committee, as usual, omit the context; which shows that he was speaking of its outbreak, and of the scene of the outbreak. The reference to the "judgment of his chief military subordinate, that the military necessity was at an end," is still more unfair and unfounded; indeed, almost every word in it is incorrect. Colonel Nelson was not the subordinate of the Governor, but of the Commander-in-chief, to whom he reported and to

whom he was responsible. And he never said the military necessity was at an end, until a day or two prior to the termination of martial law. If what he wrote as to Gordon's execution is alluded to, what he wrote was that there was no military necessity for the execution on the very day—Sunday; which implied that there *was* a military necessity for the execution at an early hour on Monday, which he accordingly directed; and the Commander-in-chief was of opinion "that under the circumstances of the colony, the case called for prompt and decided action"; *i.e.*, for a *prompt*, if not an instant execution.

"Nor would the Executive Committee have assumed to themselves and their constituents in any case the invidious function of setting the law in motion, if the Government had shown any disposition to perform that duty. Once, as has already been stated, they attempted, and they would at any time have been ready to transfer the matter to the hands of the law officers of the Crown. But the Government, though it instituted proceedings against some of the subordinate agents in Jamaica, wholly refused to take any steps for submitting the conduct of the principal agents to a judicial investigation here. The duty of vindicating the law, when thus abandoned by the Government, is cast, by the principles of the English constitution, on private citizens; if private citizens declined it, there would be no check on the illegal conduct of officers of the Crown."

But as two successive Governments declined to prosecute the Governor or Commander, on the ground that the exercise of martial law was *legal* according to the opinions of their law officers, the Committee had no "reasonable or probable ground" for believing that it *was* illegal, or that any one was criminally liable except the actual perpetrators of excesses or those who personally ordered them; and *these*, the really guilty persons, the Committee did not care to prosecute.

"For the inappropriateness, uncertainty, and awkwardness of the remedies provided by the law against a colonial governor guilty of oppression, and the protraction of the legal proceedings thereby occasioned, the Executive Committee are not responsible. Nor are they responsible for the unavoidable delay incurred in bringing witnesses from Jamaica, or for that caused by the difficulty of finding Mr. Eyre within the jurisdiction of a

professional minister of the law. Due allowance being made for these impediments, the proceedings have been carried on with all possible despatch.

"The difficulty of bringing evidence from Jamaica not only occasioned loss of time and expenditure of money, but prevented the case from being presented before the public in the courts of law with its full moral force, the Executive Committee being compelled to content themselves with no more testimony than what was technically sufficient to support the charge."

As to the "inappropriateness of the remedies provided by law against a colonial governor *guilty* of oppression," there surely could be no more effective remedy than that provided by Parliament—indictment in the Supreme Criminal Court of the realm. What the Committee *meant*, however, probably, was, that it was an awkward remedy against a Governor whom they *alleged* to have been guilty of oppression, but could not prove to have been so; and no doubt, in that sense, it is "awkward," for the result of a calm, dispassionate, judicial consideration of a case by an intelligent and impartial grand jury, under the presidency of an able and learned judge, is pretty sure to be the dismissal of an unfounded accusation, as it was in the instance of Mr. Eyre. That, however, is a feature of our law which few will wish to see altered.

As to the reflection upon Mr. Eyre, for not allowing himself to be joined in the same indictment as the officers, that has already been alluded to, and shown to be unfounded.

With regard to the latter of the above paragraphs, in which the Committee profess to lament that they were "compelled to content themselves with no more testimony than was technically sufficient to support the charge," the author ventures to express his astonishment at the indiscretion of the Committee in hazarding such a statement in the face of the course pursued by their own counsel in the conduct of the prosecution in *excluding* every piece of evidence they possibly could which tended

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in any way in favour of the accused. This has already been sufficiently shown in the comments upon the prosecution.

The Committee proceed to declare the objects they had in view and the degree of success they conceived they had attained. They declare their *objects* thus :—

“The proceedings of the Committee may be said to have had three objects—to obtain a judicial inquiry into the conduct of Mr. Eyre and his subordinates; to settle the law in the interest of justice, liberty, and humanity; and to arouse public morality against oppression generally, and particularly against the oppression of subject and dependent races.”

Now, as to this—in the first place, as to inquiry—they had already had an ample and most impartial *inquiry* before the Royal Commissioners, and they had obtained the *judgment* of these Commissioners and the Crown upon a full and careful review of the *whole* of the *real* facts of the case, and they now professed to desire a *judicial* inquiry. Upon which it may be observed—first, that if they had originally *intended* this, they ought in all fairness to have avowed it *before the Commission was issued*. For, if they *had*, it appears impossible to suppose that any responsible Minister of the Crown would have issued a Commission of Inquiry—virtually compulsory—into the conduct of its officers engaged in a rebellion, with the *view of assisting criminal prosecutions against them!* Anything more grossly, more grievously unjust, more contrary to all usage and to common justice, more at variance with what the Lord Chief Justice called “that fair play which is the right of the commonest criminal”—anything, again, to use his words, more contrary to the first principles of procedure, or anything more utterly unconstitutional, could not possibly be conceived! To issue a Commission of Inquiry into the conduct of *officers of the Crown* is, of course, virtually, a *compulsory power of interrogatory*; for how can *they* refuse to answer!—especially as the commission in terms charges all officers of the Crown

to give every possible assistance to it in its inquiries. And although the common caution against self-crimination was carefully administered at the suggestion of the promoters of the prosecution, with the very view of rendering any admissions that might be obtained admissible in evidence, no officer of the Crown would condescend to take advantage of it and thus make an admission by implication of some misconduct he dared not avow. Virtually, therefore, it was a *power of compulsory interrogatory*; and it is impossible to conceive that any Minister of the Crown would have consented to it had he been aware that it was to be used as ancillary to a criminal prosecution — at all events, except as against persons acting from bad motives. Therefore the Committee ought to have avowed their object *before* the Commission was issued.*

Not long *after* it was *issued* they obtained an opinion,† with a view to criminal prosecution which they *published* to the world (although it was, in truth, an elaborate argument to prove that a public officer abroad, serving his country in a distant colony, had been guilty of murder), and which most likely was *applied for before* the Commission issued, unless, indeed, the Commission itself suggested or encouraged the resolution to institute criminal prosecutions, in which view its injustice would only be the more apparent. *After* the opinion was obtained, the able and respectable attorneys engaged by the Committee retained counsel to proceed to Jamaica to attend the sittings of the Commission, and delivered to them instructions that they were to make use of its inquiries to the utmost to assist in the intended prosecutions. Upon the basis of that opinion, these instructions were pointed chiefly at prosecutions of *Mr. Eyre* :—

* The date of which will be seen was the end of December, vide ante.

† Dated 18th January, 1866.

“The Committee has been formed *only* because its members, judging from the reports that have been furnished by the late Governor, believe that in reference to the recent disturbances in the island of Jamaica, the Governor has been guilty of acts of illegality and cruelty, resulting in the killing and torturing of hundreds of our fellow-subjects.”

This was the belief of the Committee, formed merely upon the first hasty despatches and reports, before the Governor's answers and explanations could be received, and *anterior* to the very inquiry they had pressed for and obtained for the professed purpose of *ascertaining* the real facts. *Before* the inquiry they had formed a belief, not only that acts of cruelty and illegality had been committed, but that *he* had been guilty of such acts. And this only upon an opinion, pronounced upon materials necessarily inadequate, and on which all that could be said was that “they did not disclose a justification,” which, nevertheless, it is obvious, upon full and impartial investigation, *might* be established. The primary object avowed, it will be observed, was criminal prosecution *against Mr. Eyre*. This is put first and foremost; and though *his* subordinate officers are afterwards mentioned, there is *not a word* as to the *actual perpetrators* of atrocities. The whole object was directed against the Governor and military officers :—

“For the purposes of the inquiry, it is necessary to consider that Governor Eyre and his subordinate officers may have to be put on their trial for acts of illegality and cruelty, in all probability amounting to murder.”

“Governor Eyre and his subordinate officers!” The Governor and the military officers who are here perversely called “his subordinates,” although they were not so in any sense, and were not directed by him, and did not report to him, nor were responsible to him, but to the Commander-in-chief! “Governor Eyre and his subordinate officers!” No one else. Not a word as to actual perpetrators of atrocities or excesses. It was assumed, *against* Governor Eyre and his subordinate officers, that

if there had been any, *they* had directed or sanctioned them! This was assumed; and, assuming that, the attention of counsel was directed entirely to proceedings against *them* — “Governor Eyre and his subordinate officers!” What can more strongly show the strength and violence of the feeling against the Governor and officers, but especially the feeling against the *Governor*, which actuated the Committee?—a feeling, no doubt, entirely honest and formed upon public grounds (though it cannot be doubted that violent and natural animosity on the part of some of them as to Gordon’s death was the *real* motive, and *that* case had formed the main subject of the opinion obtained against him), but a feeling which was precipitate and passionate, and had been raised and indulged, it is evident, *before* the facts were fully known, and was only attempted to be excused by uncandid and captious use of little bits of his despatches, separated from the rest, and quite at variance with the *general* tenor and effect. Such, however, were the instructions:—

“You will consider yourself engaged in obtaining and arranging the opinion upon which the Commissioners sent out by Government, if they permit you to be heard before them, have to found their report, and upon which, also as an entirely separate and distinct proceeding, the Committee in this country will have to form their own judgment as to whether ulterior proceedings of any kind should or should not be taken or assisted by them. . . . It is of the utmost importance that the work of the Commission should not be performed in such a way as to interfere with or impede any ulterior judicial proceedings which may be resolved upon, for the purpose of bringing to trial any person who may have been concerned in illegal acts. For this purpose you will make such observations to the Commissioners as you may find possible and expedient, and in particular you will impress upon them the necessity of not permitting any witnesses to be examined without first being warned that they need not answer any question unless they like, and that what they say will be taken down and given in evidence against them.”

And such caution was accordingly given by the Commissioners at the instance of the intended prosecutors, and the *Commissioners therefore, at all events, had full*

notice that criminal prosecutions were intended to be instituted. So far as any persons were concerned who had committed any atrocities without orders, there would be no substantial injustice in this, because *such* persons being conscious of guilt would probably avail themselves of the caution or avoid being examined. But, as regards these, the Committee, it will be seen, manifested no concern whatever: they assumed that if there had been atrocities or excesses they would have been authorised by the Governor and the officers, and it was *their* prosecution for which they were anxious. And as against them, as they had acted, as they believed, justifiably, not having authorised or allowed of any atrocities or excesses—so that they could only be made liable either for acts *they* honestly believed to have been legal or by a kind of constructive liability for the excesses or atrocities of others—this operated with evident injustice; for *they* could not afford to take advantage of the caution, and thus all the evidence against them as to acts they honestly believed to have been legal and justifiable, or as to acts of cruelty with which they had no personal concern, was obtained out of their own mouths by compulsory interrogatories. Now this, it is obvious, was exceedingly hard and unjust, and calculated to discourage officers who may hereafter have to act on occasions of emergency, *and it is a course never allowed towards the most atrocious criminal.* Nevertheless, the Committee had the advantage of it, and were allowed even to cross-examine the Governor and officers, in order the better to extract from them admissions on which to make them criminally liable for acts they believed to have been done for the repression of a rebellion. In the result, no doubt, this turned out all the better for the Governor and the officers; because, not having done or allowed what they knew to be wrong, the more fully the facts came out the more they were vindicated; at all events, with one or two exceptions among the

subordinate officers. Still, it was not the less unjust. It tended, at all events, to make the inquiry, *as against the Committee*, such as they were bound to be satisfied with. But they were not satisfied with the inquiry and its results, and they desired a judicial inquiry in this country upon a *criminal* charge. Now, with what object could this have been desired? Not, it is obvious, for the purpose of inquiry, in the sense of information; for nothing could have been more full and ample than the inquiry in Jamaica, and a judicial inquiry upon a criminal charge in this country, thousands of miles away from the scene, could not, of course, have been of any use for the eliciting of any fresh or further information, and, on the contrary, must, from the narrow scope and nature of a criminal prosecution (especially on a charge of murder), and the absence of nearly all the witnesses, be infinitely more restricted, and infinitely less satisfactory, than a full inquiry on the spot.

But the conduct of the prosecutions justifies the belief that this was the very reason why they were instituted. The Commissioners, looking at the whole of the facts, had, in the main, *justified* the Governor; and no one could arrive at a different conclusion, who looked, like them, at the whole of the facts. The only chance the Committee had of reversing their judgment was to get a verdict from a jury on a portion of the facts, such small portions as could be made just sufficient to found a *prima facie* case against the accused authorities, throwing upon *them* the whole *onus* of bringing from Jamaica the vast mass of evidence necessary for their justification! It has already been seen that in point of fact such was the course taken on the conduct of the prosecution, and such was the avowed object, to *narrow* the evidence as much as possible, and throw the heaviest *onus* upon the accused, the result of which would have been that a verdict against them must have represented the result, not of the whole of

the real facts, but of such portions of them as under the most grievous disadvantages the accused could have contrived to get in evidence. It may, therefore, be fairly presumed that such was the object; and then what can be thought of the desire of the Committee for a judicial inquiry? It was a demand for a proceeding, which must have led to the grossest possible injustice, and a positive certainty of wrong. Even supposing an ultimate acquittal, the pain, the hazard, the anxiety of such an unjust proceeding would have been an enormous and inexpressible injustice; and after the means taken for two years to excite public feeling against the accused, the very demand for it in the name of justice was itself a mockery and an insult upon justice. The only excuse attempted for this obviously unjust and illegal course, that the matter was one which excited public interest, was in itself the most obvious aggravation of it, for it is precisely upon such subjects that the excitement of the public mind by one-sided statements against the accused is most certain to prejudice them. It is, therefore, most inexcusable, contrary to law, to justice, and to morality. And setting aside all the necessary and enormous disadvantages of a trial here of matters which occurred in a far distant colony, and upon evidence necessarily imperfect, the agitation and excitement which it had occasioned afforded an ample reason why it should not take place. And no doubt all these considerations were present to the mind of the grand jurors and *unpaid* magistrates who most wisely rejected the prosecutions, and tended more than anything else to *induce* them to reject them. Such combinations under the pretence of *promoting* justice only tend to pervert or to prevent justice. If a person has committed a crime, there is no necessity for combination to promote a prosecution, and such prosecutions are undoubtedly illegal; while, if the object is carried out by publications calculated to prejudice the accused, the illegality becomes criminal. Nor in the pre-

sent instance was there the least palliation or excuse for such a course, for no prosecutions were attempted, with one exception, against the actual perpetrators of atrocities, and the prosecutions were against superior authorities who had not directed any of them, and whose acts had been declared legal, or at all events not criminal, by the law advisers of two successive governments. There must be some limit to the moral right of persons to act on their own opinions to the injury of others, and that limit had surely here been reached, especially as *after* the inquiry and report of the Commissioners, it does not appear that the Committee had any legal opinions in favour of their prosecution for murder, if, indeed, of any other, and there is strong reason to believe that they had not. And, at all events, even if they had, it may with confidence be predicated that the materials for the opinion were not as ample as those before the law advisers of the Crown. The course pursued, therefore, though, no doubt, honest, was not reasonable, therefore was obstinate, and an obstinate persistence in an opinion to the injury of others, against a vast amount of reasonable evidence or authority to the contrary, amounts to persecution. No other definition of persecution by means of legal prosecution can be given. Of course the criminal law is open to all subjects, and anybody may prefer an indictment for murder against anybody else, for anything. But those parties so using or abusing the criminal law are morally responsible, and if upon the face of the facts no proper object can be observed, people are at liberty to conjecture as to others, which would not be proper. Now, in this case no proper object could possibly be answered, for the prosecutions were so conducted that they could not settle the law, being based upon supposed abuse and bad motives; and, on the other hand, could not fairly determine anything, being framed upon the narrowest possible basis of facts, and shutting out as much as possible the real facts of the

case. The object, therefore, could not have been truth nor justice, and, as already shown, the truth had already been ascertained, and the whole of the real facts disclosed. What, then, is the only possible object which could have been entertained? It must have been, it is obvious, to obtain a conviction against the accused upon a partial and imperfect view of the facts, and then to represent this as a verdict against martial law (whereas it would *not* have been so, but a verdict obtained by means of prejudice on the score of supposed abuse), or, failing that, to rely upon the vexation and annoyance inflicted by their repeated prosecutions, in order to deter others on future occasions from the exercise of martial law, at all events against negroes or other native races. For it is to be observed that these were the special objects of the Committee's exertions, the oppressors of "subject and dependent races." As if anybody wanted to oppress them! As if, now-a-days, there was any disposition; at all events, among men likely to be in authority, to injure or oppress them! As if the current were not running rather in the opposite direction, and the tendency rather to oppression of our own fellow-countrymen by classes prejudiced against them, on the plea of their pretended oppression of dependent races! As if this were not peculiarly the case in negro colonies, and, above all others, in Jamaica! That this was so had been proved, indeed, in the course of these events, and can be shown from the publications of the Committee themselves. In the Introduction it has been seen that from the period of emancipation ill-judging friends of the negroes had been inspiring them with an aversion to labour, and a prejudice against the planters, their employers; and in the previous portion of the work, it has been shown that controversies upon this subject had been among the antecedents of the rebellion. This controversy had been carried on between Mr. Eyre on the one hand, and Mr. Underhill, the able Secretary of the Baptist Society, on the

other ; and the opinion of Mr. Cardwell, then Secretary of State, had thus been pronounced upon it. The case of Mr. Underhill, as representing the patrons of the negroes, was that they were oppressed by the planters. The case of the planters, represented through the Governor, Mr. Eyre, was, that the fault was in the negroes, who would not work with any regularity, and were addicted to idleness and to squatting on land. Every one who knows anything about the negro colonies knows that this is so. Every Secretary of State, from Lord Grey to Mr. Cardwell, had declared it ; and Lord Carnarvon's interesting and able despatch, given in an earlier portion of this work, confirms it. Mr. Cardwell then declared it as his deliberate judgment :—

“The prosperity of the labouring classes, as well as of all other classes, depends in Jamaica, as in other countries, upon their working for wages, not uncertainly or capriciously, but steadily and continuously, at the times when their labour is wanted and for so long as it is wanted, and if they would use their industry, and thereby render the plantations productive, they would enable the planters to pay them higher wages for the same hours of work than are received by the paid labourers in this country ; and they may be assured that it is from their own industry and prudence, as availing themselves of the means of prospering that are before them, and not from such schemes as have been suggested, that they must look for an improvement in their position.” (Despatch of Mr. Cardwell, 14 June, 1865.)

Nothing could be more sensible, more just, more reasonable, or more calculated to have a salutary influence in Jamaica. Yet it was this which Gordon, the alleged author of the rebellion, had used as a means of arousing ill-feeling among the negroes. And what did the Jamaica Committee, among whom was Mr. Underhill—what did *they* say about it ? That it was insulting to the negroes ! It seems strange, no doubt, but here it is, in one of their own publications—

“Mr. Cardwell's letter, issued under such circumstances, *must have looked like insult*. An exhortation to earn bread by working at a time when a great portion of the population had no work to do, was far more

likely to occasion bitterness than anything in Mr. Underhill's letter." (Papers of the Jamaica Committee, No. I., p. 9.)

The notorious truth being that the colony was being ruined for want of industry; that the planters' great want was *labour*; that they were eager for it, as for their very life (which, indeed, it was, as plantations without labour are worthless); and that the negroes having been told for twenty years that the "essence of slavery was compulsory labour" (Mr. Gurney's "Six Months in the West Indies"), had contracted a great aversion to it; added to which they very much preferred squatting upon unrecognised land, and hence the strong craving for the back lands, free from rent, which the Commissioners mentioned as the great cause of the rebellion. The Commissioners, therefore, after a careful and protracted inquiry, had endorsed the judgment of Mr. Cardwell, the judgment of Lord Carnarvon, the judgment of Lord Grey, and the judgment of every one who had any acquaintance with the colonies. But the Committee of prosecutors *took the view of Gordon*, and adhered to it; and what wonder, seeing that one of their most active members was that very Mr. Underhill who had, in this country, taken the same view which Gordon had with such fatal violence urged upon the excitable black population in Jamaica. Now the reader will understand what was really *meant* by the Jamaica Committee's anxiety about subject and dependent races. It meant this: taking their part against their employers, contrary to the opinion of every statesman who had considered the affairs of the island since emancipation. It meant fanning the flames of discord and of discontent by representing to the negroes that they were oppressed, when they really were not. It meant the utmost animosity against the authorities of the day, who had taken an opposite view, and had therefore been held up to obloquy, and afterwards, having had to encounter a dangerous rebellion arising entirely from their most mischievous

incitements, and having dealt with it successfully, had for two years and a half been held up to public obloquy in this country, and declared to be covered with infamy for having done so. A Committee comprising men like Mr. Underhill, who had been prominently engaged in the embittered controversy which had led to the rebellion, were extremely likely to be so influenced and prejudiced as to take a most unfair view of the case and a most unjust course upon it; and though, no doubt, their intentions were good, and their feelings perfectly honest and natural, it is conceived that it was so, and that, under the plea of protecting a dependent race from oppression, they inflicted most cruel oppression and injury upon honourable men, who had been engaged in controversy with some among them, and had, rightly or wrongly, thrown upon them some of the responsibility of this very rebellion. No doubt the Committee really imagined that their exertions had been prompted only by zeal for an oppressed and dependent race; and on the part of many of them, no doubt, it was so, although their zeal was "not according to knowledge." Their views were so one-sided and narrow-minded as to necessitate the greatest injustice. But as regards some of them, it is more probable that they were influenced by a bitter animosity against Mr. Eyre, arising, *naturally* enough, out of their feeling about Gordon's case (whom some of them may have known); and this would account for the prominence given to that case, and the special anxiety shown for the prosecution of *Mr. Eyre*, with the most utter indifference as to the actual perpetrators of atrocities.

The Committee proceeded to consider the *success* of their efforts:—

"The first object has not been attained. The grand jury in Jamaica threw out the bill in the case of Provost-Marshal Ramsay (who had hanged a man for a gesture made or an exclamation uttered under the torture of the lash), notwithstanding the declaration of the presiding judge that a trial

was essential to the interests of public justice. The county magistrates of Shropshire and the grand juries of London and Middlesex have interposed their authority to prevent a judicial inquiry into the case of a British citizen put to death 'unlawfully and unjustifiably,' in the words of the Lord Chief Justice, by an officer of the Crown. In each case the public must be left to judge whether the result was due to the want of ground for an inquiry, or to the determination of those who interposed that no inquiry should take place. On the other hand, it is needless to say that Mr. Eyre is in error when he speaks of himself as having been twice acquitted. As there has been no trial, there can have been no acquittal ; and in that respect the case remains exactly where it was before these proceedings were commenced."

Here, as in every other matter, the statements of the Committee are entirely incorrect, and it is unfortunate that they cannot make a statement which is not so. In the case of the Provost-marshal the judge did not declare "a trial essential to the interests of justice," but only *if the jury credited the story as told by the witnesses*—which they did *not*, a different story having been put forward in the evidence reported by a Royal Commission. The Lord Chief Justice did *not* declare that a British citizen had been put to death unlawfully and unjustifiably ; but, on the contrary, the plain result of his statements and admissions in Gordon's case was to show that the man was lawfully and justifiably put to death. What he said was that the *removal* was in his opinion unlawful and unjustifiable ; but that, even if so, it *did not affect the legality of the trial*, so that his expression of opinion was immaterial, irrelevant, and extrajudicial.

It is not correct to say that the grand jury or magistrates had interposed their authority to prevent a judicial inquiry ; for on the presentment of a bill of indictment there is a judicial inquiry—with this immense advantage, indeed, to the *prosecution*, that it is upon the case for the *prosecution*, and the effect of the throwing out of the bill is judicially to determine that there *is nothing in the case to require a trial*, which, if it proceeds upon a case carefully prepared, is far *stronger* than an acquittal upon conflicting evidence. And although technically, no doubt, it is not an

acquittal, it is substantially far better, for it is a solemn judicial declaration, that, even taking the case upon the showing of the prosecution itself, there is nothing in it. As to whether the question remains exactly where it was before these proceedings were commenced, after a solemn decision of a judicial tribunal, that upon none of the grounds of accusation was there any foundation for imputing grave culpability to Mr. Eyre, any person of common sense and intelligence can judge for himself.

"The second object has been attained. The memorable charge of the Lord Chief Justice in the case of Nelson and Brand will remain, as the Executive Committee believe, a lasting barrier against the encroachment of martial law and its upholders on the rights and liberties of British subjects. If the subsequent charge of Mr. Justice Blackburn in some respects differed from that of the Lord Chief Justice, the opinion of the Lord Chief Justice is known to be shared by every other member of the Court. But even Mr. Justice Blackburn did not maintain, as some lawyers had maintained, that the power of proclaiming martial law formed a part of the prerogative of the Crown in England. His doctrine was limited to Jamaica, and was founded on Acts of the Colonial Legislature which, with all colonial Acts of a similar character, have now, and in consequence of the manifestation of public opinion respecting the events in Jamaica, been repealed. British jurisprudence, therefore, has been finally purged of martial law. The committal of Mr. Eyre, General Nelson, and Lieutenant Brand, for trial, by London magistrates, has moreover confirmed the principle that the officers of the Crown are responsible in the ordinary course of justice to the courts of law for acts done by them in the suppression, or alleged suppression, of insurrection."

Now as to this, it is simply a tissue of most manifest misconceptions. The charge of the Lord Chief Justice, so far from its being any "barrier against martial law," is rather a powerful support of it, for it admits the whole *principle* of martial law, in admitting that rebels may be executed summarily even *without trial*, and that martial law as to the civilian means martial law as to the soldier; and there is nothing against these admissions but mere arguments formed upon misconceptions as to the exercise of martial law in the colony, and *not a syllable of judicial direction* against it. Even, however, if it were true that

there was a single particle of judicial authority in the charge against martial law, it was done away with by the subsequent charge of Mr. Justice Blackburn, who distinctly laid down the legality of martial law in a case of real necessity, such as he considered that of Jamaica to be. And upon this the Lord Chief Justice could not venture to express more than a *doubt*, an extrajudicial doubt, which would weigh little against the positive judicial *declaration* of the law by a trained and eminent judge, *with the sanction of the majority of the judges generally*. So that it matters little if the other judges in the same court share the doubts of the Lord Chief Justice; and as to one of them, Mr. Justice Hannen, it is hardly possible, seeing that he, as counsel for the Crown, advised the validity of all acts under martial law done by military authority. Thus, then, the *legality* of martial law is abundantly established. And as to its resting on the *statute*, the counsel of the Jamaica Committee and the Lord Chief Justice himself strenuously insisted that it could not rest upon the statute, which neither defined martial law nor the necessity for it. And Mr. Justice Blackburn showed that the statute *extends* the common law power of declaring martial law. As to the mere committal for trial upon such a narrow and one-sided view of the case as the Committee chose to present, there is little ground for congratulation.

As to British jurisprudence having been finally "purged of martial law," the idea is confused and obscure, for it would be impossible that British jurisprudence should be "purged" of what it did not contain, and if it *did* ever contain it, then it would take far more than a mere charge to a grand jury to remove it. The author is not aware that the Colonial Acts authorising martial law have been repealed. Although the Earl of Carnarvon wrote a despatch recommending their repeal, it was not carried out; on the contrary, the Governor of Jamaica, as already stated in a previous portion of this work, distinctly

indicated his persuasion of the importance of *retaining* them, which at all events, *and especially* in Jamaica, seems manifest. Moreover, on the other hand, it would make no manner of difference whether they were or were not repealed, because in the case of colonies in which the common law applies, it applies only to subjects of *British* birth or descent, and not to natives of other races, and even if it did apply to them, it is now settled, on the authority of the majority of the judges of Westminster, that the common law authorises martial law in the case of necessity arising from a real and formidable rebellion, such as *cannot* arise in *this* country, and is not *likely* to arise in Ireland, but is not at all unlikely to arise in a distant colony. Added to this, as to *Crown* Colonies, there is the authority of the Lord Chief Justice himself that the Crown is *absolute* there, and therefore that there is no objection to martial law even on the view that it is *not* authorised by the common law. So that so far from the exertions of the Jamaica Committee having purged our jurisprudence of martial law (an implied confession that it *was there*), the result has been, on the contrary, thoroughly and firmly to establish its practical legality, in a case of real necessity; although no doubt it has abundantly been established that the necessity which could possibly justify the exercise of martial law in its fulness, as authorising a temporary suspension of ordinary law, cannot reasonably be supposed likely ever to occur in this country, and could not, except circumstances happily not to be foreseen, arise even in Ireland. For the circumstances of a negro colony, especially one like Jamaica, in which they form an overwhelming majority of the population, and have all the animosities of an entirely different race, are such as could not possibly be paralleled anywhere as in Jamaica, except perhaps India. The Committee proceeded with a strong political animus to illustrate the case of Ireland:—

“With regard to the third object, also, the Executive Committee feel

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that the efforts of the Jamaica Committee have been well repaid. A great amount of sound public opinion has been called forth ; and it is not unreasonable to think that this has contributed to the escape of the nation from anything which could leave a stain on its humanity or honour in the suppression of the recent disturbances in Ireland, where there were not wanting cruel and panic-stricken advocates of a proclamation of martial law."

With regard to the "great amount of sound public opinion called forth," the Committee probably refer to the wholesale accusations against Mr. Eyre of cruelty and inhumanity, and the epithets of monster and murderer hurled at him, under the influence of the inflammatory statements they had so industriously put forth. The author ventures to think all this the reverse of a "sound" public opinion, and he should rather prefer to call it a diseased and disturbed state of public feeling produced by false or one-sided representations. It was perfectly easy to produce such a state of feeling. The case, no doubt, on *both* sides—that is on the side of severity, and on the side of necessity, was most extreme—and the extreme severity could only be excused by an extreme necessity. Mr. Eyre himself said very truly that the retribution was terrible, and he could not deny, that unless there was a necessity for it, there could be no justification for it. Now the *necessity*, as he always said, lay in the *danger*, and the broad facts show that it was a *danger which could not possibly have a parallel upon earth* : the danger of a rebellion, spreading with singular rapidity, over a vast tract of country, among a population of 40,000 and surrounded by a population of 400,000 more of the same race and class and having the same feelings and animosities, with scarcely 1,000 troops in the colony, and less than 500 effective and disposable. Such was the peril ; one fortunately without a possible parallel upon earth. But *ignoring* all this, and representing it as a mere riot, or as no greater danger than might occur to-morrow in Ireland, there could be no defence. And it *was* ignored, and it was

represented as a case of a mere riot such as might occur in Ireland.

Now with reference to the possibility of martial law in Ireland, as the Lord Chief Justice in his charge had alluded to this, though in a very different tone, it may be well to quote the passage:—

“So far as this country is concerned the question is one of no practical importance. . . . But this, it is sad to think, is not the case throughout the whole of her Majesty’s dominions. We know that only recently in the sister island—where generations of misrule and of political and religious tyranny and oppression in past times, have engendered a spirit of disaffection which, even now, when all grievances of every sort and kind, with, perhaps, one single exception, certainly all political grievance, have been removed, still remains, and of which designing and wicked men take advantage to produce disturbance and insurrection among the inhabitants,—we know that only recently her Majesty’s Government had under their consideration whether it would be proper to apply martial law. And though a wise Government would always—and I doubt not the present Government would have done so—apply to Parliament for its sanction, a case of emergency might arise when Parliament was not sitting, and when it could not be called together in sufficient time, and the Government would therefore find itself placed in the responsible position either of omitting to have recourse to means by which insurrection and rebellion might be more effectually suppressed, or of authorising the action of martial law when possibly it might be illegal.”

Now here it will be seen that the Lord Chief Justice of England distinctly indicates that the exercise of martial law in Ireland *might* be so necessary for the suppression of rebellion in Ireland that even “a wise Government” might deem it their duty to exercise it, if an emergency arose, when Parliament was not sitting, without Parliamentary authority; and well might he say so, since the Imperial Parliament itself had again and again—no later than in the last reign—solemnly affirmed that the Crown has the power to do so. As to how, knowing this, the Lord Chief Justice could have thrown out any doubts about its legality it is hard indeed to explain, and does not for the present purpose very much matter, for it only makes stronger the observations which naturally arise—viz., that

he, even with his doubts about legality, yet recognised the possibility of an emergency which might practically compel a "wise Government to exercise martial law in Ireland;" and *he* pretty plainly indicates that not long ago such an emergency had *very nearly* arisen. And he does not use such language as the Jamaica Committee indulge in—as to cruel and panic-stricken "advocates of martial law." The use of such language provokes the recollection that some of the most active members of the Committee, however personally respectable, are men of such extreme opinions that not long before they had concurred in a petition to the House of Commons, couched in terms of such apparent sympathy for rebels, with reference to the possibility of martial law in Ireland, that the House of Commons hesitated as to receiving it. Men of such extreme political ideas were not likely to take an impartial or dispassionate view of the exercise of martial law in a case even of such extraordinary necessity as that of Jamaica; and not only in the above passage, but in others of the present manifesto, there are plain indications of the presence of a strong political feeling, utterly disqualifying them for the formation of any opinion upon the question. Nor is this all; for a previous passage pointing out Mr. Disraeli and Mr. Adderley, members of the Conservative Cabinet, as having maintained the legality, or, at least, denied or doubted its *illegality*, and suppressing the fact that they only *adhered to* and *adopted* the view previously taken by the Whig Government, on the authority of such liberal lawyers as Sir Roundell Palmer, Sir R. Collier, and Mr. Hannen, betrayed the existence of something worse than political feeling, and evinced the presence of violent *party* feeling, and a recourse to most unfair and unworthy party artifices.

This abundantly indicates the view which has been already thrown out, that the agitation against the exercise of martial law was in a great degree excited by

feelings which had no reference to the facts of the particular case, and that the abolitionists had obtained the aid of the political, and especially the Irish Liberals, by adroit misrepresentations—that the cases of Jamaica and Ireland were parallel, and that no more necessity existed for martial law in one country than the other, and that, therefore, whatever was allowed in the colony would be a precedent for its exercise in the sister country—a representation, of course, proceeding entirely upon the abolitionist view of the facts, as to Jamaica, that the bulk of the negroes were loyal and well disposed, and that there was no great or general danger!

A far more important observation, however, arises here, which is this. If the Lord Chief Justice, with his aversion to martial law, could yet recognise the possibility of an emergency which might call for martial law even in the sister kingdom, in Ireland, close to this country, with all its immense forces and boundless resources, (and it was only recognising what Parliament had again and again recognised within the last half-century or so, and even within the last thirty or forty years), what must have been the violence of partisan feeling—what the blindness of party animosity—which could prevent men from recognising the necessity for it in such a case as that of Jamaica! How different the two cases! Ireland—a country where the loyal would, in the event of the worst possible rebellion, be a majority, or, at all events, a very powerful, and, in point of strength and power and influence, pretty *nearly* equal minority—a country, too, where there is always a considerable army, besides an armed police force, which is in itself a little army, and where England is so near, that in a few hours *overwhelming* forces could be poured into the country; Jamaica, where a war of extermination was being waged by a population numbering 450,000 against a few thousand whites, with not 1,000 effective troops in the whole island, and reinforcements distant and uncertain!

It must be obvious that, to say the least, philanthropy did not exhaust the energies of these gentlemen, but that they were divided by the less lofty claims of party politics. It was all very well to excite public sympathy about oppressed and dependent races, but it was well also to have an eye to home, and, above all, not to forget the interests of party. It would be extremely desirable to represent martial law in the most odious colours, *and then try and throw all the odium upon the Tories*. This was a master stroke of party policy, and shows that humanity and philanthropy are by no means inconsistent with a keen and shrewd pursuit of worldly interests, nor even with a certain amount of trickery and artifice. The Committee proceed in this strain of apology :—

“That sympathy with Mr. Eyre and with his policy should at the same time be exhibited in the quarters where it prevailed, was inevitable. It was inevitable, also, that this sympathy should take the form of charges of vindictiveness, malignity, and persecution against those who, without the slightest personal feeling, were endeavouring to discharge the unwelcome, but indispensable duty of guarding the public liberty and vindicating the law ; nor was it unnatural that such charges should find acceptance among the unthinking, when, from the lapse of time, the agony of so many hundreds of sufferers had been forgotten, and the annoyance inflicted by legal proceedings on the author of the suffering alone remained present to the mind. In answer to the charge of persecution, so far as it is founded on the protraction of the proceedings, the executive committee repeat, that for this protraction they are not responsible. Had Mr. Eyre been advised to meet justice like his subordinates, his case would have been brought to as prompt a hearing as those of General Nelson and Lieutenant Brand.”

It is most unfortunate that the respected name of Mr. Mill should have been put to a document which begins and ends with misrepresentations, and with imputations which have no foundation, and recoil upon their authors. This last is peculiarly unhappy, for it renders necessary another exposure of the trick which was attempted, in trying to join Mr. Eyre with the officers, so as to *deprive either of the benefit of the evidence of the others* ! It was the hope of doing this, it is evident,

which induced the Committee to delay so long the prosecution of the officers; for that prosecution was not attempted until eight or nine months after the Report of the Commissioners was published. And then they waited for months in the hope of being able to proceed against Mr. Eyre in the same way in London. They knew all the while where he could have been found in the country; they could have prosecuted him at the two assizes which had taken place since the publication of the report; but they wanted to bring him before a paid magistrate in London, whom they hoped would be more accessible to the influence of the inflammatory articles they were daily publishing in their organs of the London Press, and for *this* they waited month after month, and then in their final manifesto sought to throw the odium upon *him*, because he did not play into their hands and help them to render *more* unjust and oppressive proceedings, which must *necessarily* be so after all that had occurred. Well might they say it was natural that sympathy with Mr. Eyre should be exhibited. No doubt it was "inevitable." Under such circumstances, it would have been extraordinary if it had been otherwise. The whole history of the country affords no instance of proceedings so unjust and oppressive. No doubt it was not so *intended*. It all resulted from a wrong view of the law—that is to say, a narrow and one-sided view of it. It was an extreme, exceptional case on both sides; that is, on the side of necessity and the side of severity. Ignoring the necessity, the severity would appear atrocity and cruelty. As Mr. Eyre himself said, "the retribution was terrible;" and it could only be excused by a terrible necessity. That is to say, by a terrible danger; for Mr. Eyre always put it upon that, and it was here that he was so fatally misunderstood, and here that his assailants showed such a want of candour. They quoted little bits from his despatches to show that he said the rebellion

was subdued. The context showed that he was speaking of the outbreak. It was subdued, he said, where it first broke out, but it was ready to burst forth all over the island, and the *danger*, he said, was imminent. He never said the *danger* was over. On the contrary, to the last he said it was terrible. He put it upon danger, and a danger far deeper and more deadly than any mere open rebellion—any resistance to troops—any encounter of armed men in the field; how *could* there be when there were so *few* troops, that it would have been difficult for the insurgents to get at them had they wished, and still more for the troops to get at the insurgents had they tried. But nothing was further from the thoughts of the insurgents than to meet the troops in encounter—at all events, until the few troops were worn out, wearied, and exhausted. Ten days after the outbreak it was *hoped* that they were so, and the insurgents *did* meet them in arms in the field—a fact studiously ignored by all the assailants of the Governor, and, sad to say, ignored by the Lord Chief Justice of England in his denunciation of him. But the danger was not there. The danger was not in armed assemblies or open resistance. It was the idlest thing in the world to talk of that as the danger: the real danger lay in the fact that blacks had risen against whites in a war of extermination, in a colony where the whites lay everywhere scattered among the blacks, as one amidst thirty or forty! The danger lay in the fact that blacks had risen and massacred whites in a colony where the blacks were to whites as nearly half a million to a few thousands, and the military were as “a mere handful.” The danger was in the fact that, as the Commissioners stated, the rebellion had for its object the extermination of the whites, and that it spread *with singular rapidity over a vast tract of country*, among a black population bearing a far larger proportion, and having a more overwhelming preponderance, than in any other country or colony in the world. That was the dan-

ger he had to deal with : a rebellion spreading with singular rapidity (as the Commissioners stated), among a population of 450,000, with 450 disposable troops to meet it ! In a word, he had, with less than 500 men, to keep down rebellion among nearly half a million ! Such was the danger, and if it were realised, it would be admitted to excuse almost any amount of severity. Mr. Buxton, the former Chairman of the Committee, admitted in his place in Parliament, that if indeed the danger had been so great as Mr. Eyre had represented, he could not say that there had been any excess. The Chief Commissioner said the danger was *fully as great* as Mr. Eyre had represented ; the Secretary of State said so too, and said so eloquently and emphatically. And no one in his senses doubts it. So that, *according to the admission of Mr. Buxton* himself, upon a state of facts which is now established, *there were no excesses*, that is, in the executions authorised by the authorities. But then, to realise the danger requires some effort of intellect, some exercise of candour, some power of taking a clear, calm, and comprehensive view of the whole circumstances of the colony. And, unfortunately, this is far less easy, especially for persons already labouring under excitement and under the influence of prejudice, than it is to realise severities. Anyone can realise the horrors of hangings and floggings, and anyone who has witnessed them, or heard of them from those who have witnessed them, can hardly fail to have his feelings pained and harrowed. All punishment is painful to contemplate, and in capital punishment there is something awful ; and when the horror is, so to speak, enhanced by suddenness and intensified by number, the most painful impression must be produced on those who have witnessed, or heard from eye-witnesses of such dreadful scenes. This was the position of many of the Jamaica Committee, and it is impossible for anyone of any candour or capacity of feeling not to appreciate the

effect which these things were calculated to produce upon their own minds. And it was natural that, under the influence of these feelings, their minds disturbed and horrified by the detail of these severities, they should not have been in a state to do justice to those who had deemed it their duty to inflict them. It is obvious that in such a state of mind they would have been little able to enter into the consideration of *danger*, especially as the arguments to establish the danger—from the very nature of danger—lay less in actual facts than in *inferences* from facts; and, moreover, ran counter to some of their most cherished notions and prejudices. The hangings and the floggings were visible dreadful horrors to the mind, which were only too forcibly and painfully realised. But danger arising from the supposed disposition of some hundreds of thousands of men, of a race under their special patronage—danger, to their minds, doubtful, distant, or even denied—was difficult to realise; and not being realised, the necessity was not recognised; and, of course, severities for which there appeared no visible necessity, easily took the aspect of atrocities. This was the natural, almost inevitable course their minds would take, under the influence of the first tidings of these terrible severities; and that man's mind must indeed be narrow, uncandid, and illiberal, who cannot, in this state of feeling, find abundant explanation, and even a great amount of excuse, for what followed, without resorting to any harsh and uncharitable imputations of "malignancy" or vindictiveness. The gentlemen of the Jamaica Committee, among whom were numbered some of the most eminent persons of the day, need not apprehend that any one for whose opinion they would care, will impute to them any unworthy motives for the course they took; nor any worse fault than an intellectual fault—a fatal fault, no doubt, in its consequences to others, but involving no dishonour to their character,—the fault of taking too *narrow and one-sided a view of the*

case, and not exerting themselves enough to *realise the danger*. This fatal fault lay at the root of all the injustice that ensued. Totally ignoring the danger, they ignored the necessity; ignoring the necessity, they of course inevitably conceived the severities to be atrocities. So conceiving, of course they regarded those who inflicted them as cruel and inhuman, and Mr. Eyre, who allowed them, as callous and indifferent. From this it naturally came to pass that they regarded him with aversion and with animosity, and pursued him with rancour and with acrimony, as men naturally do regard and pursue those whom they consider to be cruel and inhuman. And under the influence of these feelings it is scarcely likely that they should do him justice: it was inevitable that they should do him cruel injustice; that they should shock his feelings with the most shocking accusations; that they should cover him with infamy; that they should hold him up year after year to obloquy; that they should make his name a synonym for inhumanity; that they should not rest until he was recalled, ruined, crushed to the very earth. All this was natural, inevitable, taking their view of the case, that there was no danger, and no appearance of it, and so no necessity for severity. And it was natural that, under the first excitement of these fearful tidings, they should, with their peculiar prejudices, and predisposition to think well of the negro and badly of those against whom he rose, take this view, and seek to diffuse it in order to obtain an inquiry.

But had they a moral right to *continue* to adhere to this view, after it had been disproved by the result of a most careful and impartial inquiry? Had they a right to uphold it after the Royal Commissioners had reported to the effect that there had been a dangerous and formidable rebellion? Had they a right to persist in it after the Royal Commissioners had reported that a *planned* rebellion, with the *object of exterminating the whites*, was

“spreading with singular rapidity over a vast tract of country ;” among a black population of 450,000, in a colony where the whites were 13,000, and the whole military force 1,000, and the effective disposable force 450? Had they a moral right, after this, to keep on telling the country that there was no rebellion—that there was no danger—that it was a mere riot—and that it was over in a day? Had they a moral right, after this, to keep up their cry of inhumanity and cruelty against the authorities who had to deal with this terrible emergency? And, even supposing for a moment that they had a right to differ with the Commissioners and deny the facts solemnly set forth in their careful and judicial findings—had they a moral right to assume that they were right and the Commissioners wrong; and to tell the country in speech and publication, as undoubted fact, that there was no rebellion, no danger, no necessity for terrible severities, after the Commissioners had reported that there was such necessity, and that the necessity for the terror inspired by martial law continued during the whole period of its maintenance—only they thought, as a mere matter of opinion, that its actual operation might have been suspended after its terror had been exerted for half the period? Had they a moral right to tell the country, as undoubted fact, that there was no necessity for martial law at all; and that it was *all* cruel and unnecessary severity? And after the law advisers of successive Governments had declared that the exercise of martial law was legal, had they a right to put forth denunciation of its illegality, and assert the criminality and cruelty of its exercise? Above all, even if they had a right to dispute its legality, had they a moral right to ignore the honesty of its exercise? Had they a moral right obstinately to reject the opinions of the law advisers of two successive Governments, that the exercise of martial law in the colony was legal, so far as it had been honest;

and also to set themselves with equal obstinacy against the opinion of the Royal Commissioners and of two successive Governments, that the Governor had acted honestly, and had done his best on a terrible emergency, and that if he had erred, it was only an error of judgment? Had they a moral right, in opposition to all the weight of authority, obstinately to adhere to the belief they had formed, and avowed with such passionate precipitancy, even before the inquiry:—that he had been guilty of illegality and cruelty? But, even if they had a right to retain an honest, but obstinate belief, contrary to all this authority, and without any reasonable ground for it—had they a moral right to continue to put forth the most inflammatory statements in and out of Parliament, not only against the legality, but the humanity of the Governor's conduct, and to denounce him as covered with infamy? Had they a moral right to do all this, intending, if they could, to bring him to trial upon criminal charges, on which, after all this prejudice, he could hardly be fairly tried? Had they a moral right to do all this? Had they a legal right: had they a legal or moral right to libel a man—with cruel persistency, for two years—against whom they intended to institute prosecutions? Had they a legal or a moral right to hurl the most odious charges against him by way of preparing the public for his trial? Had they a right to do all this in the name of justice, and, under the pretence of zeal for law, to break the law, deliberately, persistently, so as to inflict the most cruel injury? And all this in the name of justice and humanity; and for the sake of protecting “an oppressed, dependent race!” Is it lawful to do bad that good may come? Is it right to do wrong, in order to help to punish supposed wrong? Is it justifiable to libel a supposed criminal by way of preparing for his trial? Is it moral to do this against a man whom the ablest men in the country had declared not to be criminal, but “brave, courageous, and humane?”

And if it ever can be moral, *can* it be so if it be not done with common fairness, and a decent regard for truth and justice? Was it morally *right* to continue to keep up this clamour against the unfortunate Governor, after the Report of the Commission, upon false or one-sided statements, contrary to, or not in accordance with, their careful findings, *suppressing those findings*? Was it fair, or just, to keep up the cry about 439 persons executed and slain without adding, as the Commissioners had stated, that in the great majority of cases the trials were proper, and the sentences just, and that the instances to the contrary were exceptional? Was it right to *give these instances to the public* as if they were *illustrations* instead of *exceptions*? Was it morally right to hurl all these cases at the unhappy Governor, and to declaim about hundreds of innocent men having been executed, when the Commissioners had not reported that one single instance of an innocent person having suffered, and only a few instances of persons not *proved* to have been guilty? Was it just to throw all these cases at Mr. Eyre, who was not personally responsible for a single case, except that of Gordon, and knew nothing of the executions or the trials, except that they were under competent military authority, who, he presumed, would see that the trials were fair and proper—as it turned out in the result, for the most part, they were? Was it just to conceal from the public that the Commissioners had found that the excesses were, for the most part, almost entirely during the first few days, in the field, in the first hot rage of pursuit, after a cruel massacre of the whites, and, for the most part, were acts of private soldiers, in most instances blacks, in the absence of their officers? Was it fair, *concealing* all this, to take the general and equivocal findings of the Commissioners that the punishments were excessive, and then to hurl at Mr. Eyre coarse and wholesale accusations of inhumanity, although it was well known that he could have

had no knowledge of the excesses? Was it fair to conceal from the public that he had sent to the Commander-in-chief a general suggestion that only those who *deserved* death should be executed, and that the punishment of flogging should not be inflicted more than should be found necessary, and then to denounce him for callous indifference, and accuse him of never saying a word to stop all these barbarities, and so forth, well knowing that he had issued general directions, which, if carried out, would have prevented them; and that if the officers who were *present* could not prevent them, *he*, absent and at a distance, could not be expected to have done so? Was it fair, in a word, to suppress the findings of the Commissioners to the effect that there had been a planned rebellion, with the object of the extermination of the whites, and which had spread with singular rapidity over a vast tract of country, among a black population of 450,000, in a colony where only 500 troops could be sent against the insurgents? Was it fair to suppress all this, and tell the country that it was a mere riot, that there was no danger, and that it was "over in a day?" Was all this consistent with common justice, with the fair play which is due to the meanest criminal, with reason and humanity, nay, with *common morality*? How far this was the character of the publications and proceedings of the Jamaica Committee, the reader has had some opportunity of judging, and especially from their last and final manifesto, which we thought it just to give *in extenso*, but upon which we also thought it just to make such comments as occurred to us. It will have been seen how entirely it was pervaded by that fatal fault of one-sidedness which has characterised all the views and proceedings of the Committee. No doubt they have been sincere, but they have been one-sided; and those who are one-sided can never be just. They have always taken one view of the facts, that is, a view of *one side*, or one part of them, and have ignored the other.

They have always sought to obtain a verdict, either from the public or from a jury, upon one *part* of the case, not upon the whole. They have paraded the severities, suppressing the necessity, and of course the severities seemed cruelties. They have done this, no doubt, honestly, for their prejudices prevented them from seeing the whole. Their minds had been so narrowed by prejudice and excited by feeling, that they really did not, and could not, see more than one side of the case. This comes of men combining themselves for some particular object, and pursuing it together for a long course of years, until it has bred a sort of fanaticism. Nothing more hardens the heart or perverts the intellect. It narrows the mind so much as to blind, or rather distort, the mental vision. Only objects of one sort are seen, or under one colour or aspect. The abolitionists engaged, for so many years in embittered contests with the colonists, had come to regard them with a kind of natural antagonism, and could not realise the idea of danger to *them* as causing any necessity for severities to those objects of their own peculiar interest, the negroes. Had they been Hindoos, or Malays, or Cingalese, it would have been different; but these were negroes, the clients of the abolitionists, and the men who had exercised these severities upon them were their old antagonists, whom they had *reviled*, and of course *hated*. What more need be said? It explains everything. Of course these gentlemen could see no danger from negroes to the whites. They had so long been accustomed to consider the negroes as the victims of the oppression of the whites, that they could regard them in no other light—as dangerous rebels not at all! Besides, they belonged for the most part to the class of professed philanthropists, champions of the oppressed and dependent races, and therefore naturally took the one-sided view. They had long habituated themselves to consider their countrymen abroad as inhuman oppressors, and their sympathies were

instinctively against them. Added to all this, there was a change of Government early in the history of these events, and the temptation was irresistible to unite the claims of humanity with the interests of party, and hit the Tories while defending the negroes. From this combination of feelings, it may be conceived what chance of justice had Mr. Eyre from these gentlemen. Hence all their proceedings and publications against him have been marked by the most singular one-sidedness; and, in the final manifesto, for instance, there is not a single statement which is not incorrect or incomplete. So it has been all through.

Still it is strange that it should not have occurred to them that this systematic preference of a part of the case for the whole, this exclusive attention to one side of the case, and entire disregard of the other, were the strongest possible confession on their part that, upon the *whole* of the *real* facts, Mr. Eyre was unassailable. But then the multitude, who had no access to the report, would never detect the deception; and they relied more upon the prejudices of the multitude than the opinions of the intelligent. Otherwise this is unaccountable, that they should have so framed their case as to ignore all the facts on one side; and thus, in so striking a way, imply their complete consciousness that, *if the whole were stated, they had no case*. And so it is. Their former chairman admitted, in the House of Commons, that if indeed the danger had been so great as had been represented by Mr. Eyre, then he could not be reproached with excessive rigour in his measures. The Commissioners and the Secretary of State declared the danger to have been *quite* as great as Mr. Eyre had represented; and thus, therefore, it is obvious that his assailants could not venture to state the whole case, *nor any part* of the case, as to the *danger*, but entirely deny it, and declare it was a mere riot, a "disturbance," nothing more, "over in a day!"

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This is the case against Mr. Eyre. It follows, and is plainly implied, that if indeed the danger was real, terrible, and formidable, there is no case against him. It is admitted by the highest authorities that it was so. And the inference is obvious.

The truth is, it can be shown clearly, from the publications of the Jamaica Committee themselves, that, inspired by a very natural feeling of resentment and indignation at Gordon's execution, of which they could not realise the necessity, they formed themselves into a combination really against Mr. Eyre, and committed themselves, before they knew the real facts, to views and measures which they would not afterwards abandon, and which they continued, by means of their combination, to impress upon Government, Parliament, and the public, when it was abundantly made manifest that such views were not maintainable, and such measures not supportable. Under the influence of these feelings, they fell into fundamental fallacies, which they would not relinquish, and which they succeeded, to a great extent, in impressing upon the Government, upon Parliament, and the public; and the influence of which can be traced all through the proceedings; and which wrought, in the result, the most monstrous mischief and injustice. And this can be shown from their own publications.

As already mentioned, soon after the first despatch arrived, containing the account of the execution of Gordon, they laid it before counsel, *without the numerous enclosures which it contained*, in which lay the chief evidence of the necessity of the measure arising from the real character of the insurrection and the circumstances of the colony, and only with such of the reports of the officers as had appeared in the papers, and desired an answer to questions mainly directed to the case of Gordon, and the prosecution of Mr. Eyre for his murder. The answer of their counsel was that—

“ Martial law is the assumption by the officers of the Crown of absolute power, exercised by military force, for the repression of an insurrection, and the *restoration of order and lawful authority*, and the officers of the Crown are justified in the destruction of life to any extent that may be *necessary for that purpose*.”

That purpose, it will be observed, is expressly declared to include the restoration of order and *lawful authority*. And this principle was afterwards applied thus, in terms essentially different :—

“ The legality of the conduct pursued towards Mr. Gordon depends, according to the principle above stated, on the question whether it was necessary for the suppression of *open force* and the *restoration of legal authority*.”

It will be obvious that on this principle the execution of Gordon would have been *justified*, if it was necessary, not *merely* to the suppression of open insurrection, but to the *restoration of legal authority*. And it will further be obvious that the restoration of legal authority would not be attained so long as there were so many thousands at large who had recently engaged in a bloody rebellion; that “ legal authority ” could not safely be exercised without the presence of armed force, which the military force in the island was too weak to supply. But in the practical application of this opinion, it was manifest that counsel shrank from this result, and sought to narrow it to the necessity for the suppression of *open force*, or *actual* insurrection, at the precise spot where the execution occurred, *which was in the occupation of the troops* ! This, it was obvious, was because, on the materials laid before them, they did not, and could not, realise the condition of the colony. They said :—

“ We see nothing whatever in *Governor Eyre’s despatch* which affords any ground for thinking that such could have been the case.”

The *enclosures* having been withheld.

“ *It would perhaps be too much to say that no conceivable state of things*

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could justify the treatment he received ; but *no such facts are mentioned in Governor Eyre's despatch*. . . . We are of opinion that they could justify the execution of Gordon only if they could show that the step was immediately necessary for the preservation of peace and the restoration of order. They had no right to punish him for treason, even if he had committed it ; their province was to suppress force by force, not to punish crime."

This was inconsistent with what had already been written, that the destruction of life to any extent would be justifiable, if necessary for the *restoration of legal authority*. It was forgotten that punishment is deterrent, and may be a measure of prevention and protection. It was also inconsistent with what followed—

"Cases might be imagined in which some of the acts specified might be justified. If, for instance, the loyal part of the population were (as in the case of the Indian Mutiny) greatly outnumbered by a rebellious population, measures of excessive severity might be absolutely essential to the restoration of the power of the law, but this would be a case not of punishment, but self-preservation."

That is, it is presumed, it was meant that it would not *merely* be punishment, but also be self-preservation by *means* of punishment ; for, of course, it would be punishment, unless it is meant that the *innocent* might be executed ! This, however, is a distinct admission that if the danger were really great, such executions would be justifiable.

"No facts stated in *Governor Eyre's despatch* appears to us to show any reason for such conduct in Jamaica." (Jamaica Papers, No. I., p. 79.)

No facts stated in the *despatch*, the enclosures not being before them, and even if they had been, the despatch was not written in the way of defence against a criminal charge, or as the foundation for a legal justification. The enclosures, however, were most material, and they were not before counsel, whose opinion, therefore, being given on a most hasty and imperfect account of the case, was practically worthless, and was, indeed, carefully made conditional

upon the state of things *not* being such as they intimated *would* afford a justification ; that is to say, a great preponderance of the rebellious over the loyal :—

“ If the loyal part of the population were (as in the case of the Indian Mutiny), greatly outnumbered by a rebellious population, measures of excessive severity might be absolutely essential to the restoration of the power of the law.”

Now *this* turned out to have been the case ; so that, according to the opinion of the counsel of the Jamaica Committee, Mr. Eyre was justified. For the Commissioners reported that—

“ The disturbances had their origin in a planned resistance to lawful authority ; and not a few had for their object the extirpation of the white inhabitants, and it spread with singular rapidity over a vast tract of country,” &c.

And this was in a colony where, as it appeared in evidence, the blacks were 450,000, the whites 13,000 ; the whole number of troops 1000, and the effective and disposable force 450 ! The Secretary of State therefore had stated—

“ The greatest consideration is due to a Governor placed in the circumstances in which Governor Eyre was placed. The suddenness of the insurrection, the uncertainty of its possible extent, its avowed character as a contest of colour, the atrocities committed at its first outbreak, the great disparity of numbers between the white and the black populations, the real dangers and vague alarms by which he was on every side surrounded, the inadequacy of the force at his command to secure the superiority in every district, the vicinity of Hayti, and the fact that a civil war was at the time going on in that country : all these circumstances tended to impress his mind with a conviction that the worst consequences were to be apprehended from the slightest appearance of indecision.”

It would be impossible to conceive a greater degree of danger, and, be it observed, that the danger was *not* of open insurrection in the sense of large assemblies of armed men seeking encounter with the troops, but of sudden surprise and massacre of the whites by the blacks, who every-

where surrounded them ; and who would not require to assemble in large bodies in order to effect their object, and who would have been very foolish indeed to encounter the needless peril of contest with regular troops, who were so few, and therefore so distant that they would have had to undertake arduous marches in order to get at them, even if they desired so to do, but whom it was obviously their policy to avoid meeting. The danger was not to the *troops*, nor of encounter with troops, but of universal massacre in districts distant from the troops. The Secretary of State himself put the real danger when he wrote thus of Mr. Eyre's position :—

“The inadequacy of the force at his disposal *to secure superiority in every district.*”

Mr. Eyre felt this to be the danger ; and he accordingly continued martial law until the military force at his disposal was so far reinforced as to enable him to secure the superiority in every district, by *sending a detachment of troops into every district*. So soon as he had done that the exercise of martial law was terminated. It was used only to supplement the inadequacy of the military force at his disposal, and no longer than till this, which Mr. Cardwell states as “the real danger,” was at an end ; not a day longer. And according to the opinion of the counsel of the Jamaica Committee, this was justified. At all events it would be by the terms of the Colonial Act, which they failed to observe, and which expressly authorised martial law upon the appearance of *danger*, and, of course, as long as the appearance of danger continued. He therefore continued martial law *as long as danger continued*. Whether he was right or wrong in that course, is not so much the question as whether he might not *reasonably suppose* that he was right. And how on earth could he dream otherwise if he looked into the authorities, or recalled the precedents, one so recent and so remarkable as Ceylon. As to the autho-

rities, he would have found it thus laid down in the latest publication on the subject :—

“Martial law, as Blackstone truly says, is in fact no law. It is an expedient resorted to in times of public danger similar in its effect to the appointment of a dictator. The general or other authority charged with the defence of a country proclaims martial law. By so doing he places himself above all law. He abrogates or suspends at his pleasure the operation of the laws of the land. He resorts to all measures, however repugnant to ordinary law, which he deems best calculated to secure the safety of the State in the imminent peril to which it is exposed. Martial law being thus vague and uncertain, and measured only by the danger to be guarded against, it is only suited to those *moments of extreme peril* when the safety and even existence of a nation depend on the prompt adoption and unhesitating execution of measures of the most energetic character.”—*Bishop's Criminal Law of the United States*, s. 45.

And, as to precedent, what could he do better than follow the recent and remarkable precedent of Ceylon, which he would the more naturally advert to since it occurred under the very Minister whom he knew to be at the head of affairs ; and the course pursued by the Governor on that occasion was thus approvingly described by Lord Russell :—

“The news of the insurrection came suddenly upon the Governor. He immediately sent for an officer in whose discretion and experience he might well trust, and acted according to that opinion. He immediately saw the general commanding the forces, he took means by which the rebellion might be promptly suppressed, and in order to do that more effectually, with the concurrence of the General and Attorney-General, he proclaimed martial law in the district which was disturbed.”

“The Governor, in this matter, acted in concert with, and with the advice of, his Executive Council ; and, finding that there was a preponderance of opinion in the Council in favour of continuing martial law, and that, above all, the General commanding the district was strenuous in advising that the operation of martial law should be continued, he continued it. The Governor was guided by opinions which he had conscientiously formed ; supported as he was, by those who ought to advise him in the colony. Thus, in proclaiming and continuing martial law and punishing those who suffered, he was acting in the only way that could maintain the tranquillity of the country.” (Lord Russell, debate on Ceylon, House of Commons, May, 1851.)

The course here described was *precisely* that pursued by Mr. Eyre. He acted throughout in accordance with the advice and opinion of the Council and the Commander-in-chief; and especially in the execution of Gordon, as to which the Commander-in-chief said his opinion was that, in the then circumstances of the colony, the case called for prompt and decided action, and that he therefore deemed the execution necessary; and that the continuance of martial law was necessary *until the reinforcements were distributed*. In the Ceylon case the Minister said the Governor was right in acting on his honest belief, and in accordance with the best advice he could obtain, and that *if he did so he ought not to be censured* :—

“The Government believed that in proclaiming martial law, and in punishing those who suffered, the Governor was acting, as he believed, in the only way that could maintain the tranquillity of the country, and provide for the welfare of her Majesty’s subjects. It was their belief that when you send a Governor to a distant part of the globe, when you find that he is zealously performing his duty, and endeavouring by all the means in his power to preserve the colony in allegiance to her Majesty, confidence ought to be placed in him, and we ought not to throw any censure upon him on questions upon which, if there could be any difference of opinion, he was *more likely to judge rightly from the circumstances before him with the assistance of his advisers*.” (Lord Russell, House of Commons, May 29, 1851.)

How, then, does it so happen that under the very same Minister, Mr. Eyre, for taking the same course in a case of *infinitely greater* danger, should have been censured and recalled? It is impossible not to see that it was because, under the influence of a powerful combination, and of the fallacies they had dispersed, and under the pressure of the enormous weight of political power they excited against Mr. Eyre, his condemnation was a *political necessity*. The presence and influence of these fallacies can be shown from the very terms of the despatch in which he was condemned, and in which, quite at variance with the view previously conveyed as to the real danger, Mr. Cardwell wrote,—

"On the other hand, however, it must be borne in mind that the execution of capital sentences under martial law, continued for the month authorised by the statute, although after the few first days no serious outrages were committed by the insurgents, nor was *any resistance offered to the troops.*"

This was quite incorrect as a matter of fact ; for *ten days* after the outbreak the insurgents met the troops in the field ! But the *fallacy* was far more fatal than the error, in fact. The fallacy was in forgetting that the question was one of *danger*, and a danger, not to the troops, whom the insurgents would take good care *not* to attack (until they were worn out), but to the unarmed, unprotected whites scattered throughout that large island among myriads of the blacks, isolated, surrounded on every side, utterly unprotected. It was this which was in Mr. Eyre's mind ; it was these circumstances of the colony which made the Commander-in-chief require the prompt execution of Gordon and the continuance of martial law until the troops could be dispersed through the country. The Secretary of State had himself stated that the real danger was the "inadequacy of the military force to secure superiority in every district;" and, in the *absence* of such superiority, what resource was there but the "terror" inspired by martial law ? The Secretary of State, forgetting that ten days after the outbreak the rebels had actually become so emboldened as to attack the troops, gives it as a reason why martial law was not required that there had been no serious outrage after the first few days, forgetting that *this could only have been by reason of the terrors of martial law.* It could not have been for want of *disposition* to massacre, *that* had been abundantly shown ; and the Commissioners stated this was one of the objects of a *planned* rising. It could not have been by reason of the presence of troops, for they were so few that they could only be present in three or four places. Where they *could* be present, of course, there was security ;

and the marvellous misconception which had misled the Jamaica Committee, and which would have been almost amusing had it not led to such monstrous injustice, may be illustrated in a passage from the speech of Mr. Buxton in the course of the debate :—

“When the so-called rebellion was at its greatest height, the Governor himself officially states that an ensign with thirty-five men marched through the very heart of the disturbed districts without finding any resistance or organisation among the rebels. Not a negro wagged so much as his finger against the authorities. Looking to these facts, he was utterly amazed that any one who had any regard for the honour of England dared to maintain that all this hanging, shooting, and flogging that went on for more than a month was necessary, because otherwise the negroes would have shaken off the Queen’s authority, and driven the whites into the sea.” (“Hear, hear,” from Mr. Mill.)

Precisely so. Here is the fallacy which so fatally misled Mr. Buxton and Mr. Mill, and, by means of the immense influence they *exercised*, misled Mr. Cardwell: the notion that the mischief to be met was open insurrection, or that the danger was of *attacks on the troops*! The danger was in the *absence of troops to attack*. When the troops were *present*, of course, danger ceased. This was Mr. Eyre’s own view. Therefore it was that he urged the distribution of the reinforcements as soon as they arrived, and stopped martial law so soon as they *were* distributed. But *until* then the real danger, as Mr. Cardwell had put it, “lay in the inadequacy of the military force at the disposal of the Governor to secure superiority in every district.” So soon as the military force at his disposal enabled him to distribute the troops, and thus to secure this superiority in every district, martial law was stopped. It has already been shown that through differences with the Commander-in-chief this distribution was not effected until almost the last day of martial law. And *until* it was effected, what was the situation of the whites in remote districts? They were utterly defenceless. They lay at the mercy of the thousands of blacks on every side

of them, among whom a conspiracy to massacre them had just "spread with singular rapidity." Is it possible to conceive a case of greater danger?—a more appalling peril? It was a peril without *a possible parallel upon earth*. The case of the Indian Mutiny was nothing to it, for there the bulk of the *people* were not hostile to us, and, as Gordon himself said, it was a country so open to the operations of troops, that the subjugation of rebellion was certain. It was quite otherwise, as he himself pointed out, in Jamaica—a country mountainous, wooded, difficult of access, and in which, if the insurgents once got into the bush, rebellion might hold out for years, as it *had* held out in that very colony, with an ultimate loss of life far transcending that which was caused by the exercise of martial law. Yet in the face of facts, showing a peril without a possible parallel upon earth, the Secretary of State, under the influence of fallacies which had been diffused with all the energy of a powerful combination, never adverted to the consideration of danger as warranting martial law—never adverted to the opinion of the Commander-in-chief, and condemned Mr. Eyre because martial law was continued after *open* rebellion ceased!

Admitting the continuance of all the *elements* of danger—admitting the lawfulness and efficacy of deterrent measures as a means of *meeting* the danger—the Secretary of State yet condemned Mr. Eyre for continuing those measures as long as the danger existed!—

"It may, indeed, be admitted that, as you have said, *the Government would have incurred a serious responsibility if, with the information before them, they had thrown away the advantage of the terror which the very name of martial law was calculated to inspire*; but it appears from the summary of the sentences by court-martial appended to your report, that the numbers executed must have included many who were neither *ring-leaders* of the insurrection nor participators in actual murder or outrage of the like atrocity; while for the wholesale flogging and burning of houses, the circumstances of the case do not appear to furnish any justification. Future good government is not the object of martial law. Example and punishment are not its objects: its severities can only be justified when

and so far as they are absolutely necessary for the immediate re-establishment of the *public safety*."

As to the wholesale flogging, &c., Mr. Eyre had nothing whatever to do with it; and as to the executions under sentence of court-martial, they took place under military authority; and the Commissioners had reported that—

"In the *great majority of cases*, the evidence fully justified the findings."

And the Secretary of State admitted that executions would be justified when necessary for the immediate re-establishment of *public safety*, which certainly was *not* secured in Jamaica so long as the inadequacy of the military force, as he himself stated, prevented law and order from securing the superiority in every district. The Secretary of State appears to have based his disapproval upon the ground that *only ringleaders or actual murderers should have been executed!* Yet in the Ceylon case, where, at all events, at least a score were executed under sentence of court-martial after some hundreds had been slain—that is, executed in a mass—there was no real rebellion at all, and not a single life taken by the insurgents, so that the victims could hardly have been ringleaders, and could not possibly have been murderers. Yet Mr. Cardwell refused to disapprove of the course then taken by the Governor, and a majority of the House of Commons went with him in supporting the Minister. Is it not manifest that the real cause of the different course pursued in the Jamaica case is to be found in the tremendous force and influence exercised by the great combination formed among the political supporters of the Government, and exerting upon that Government the pressure of a power so irresistible as to constitute a case of political necessity?

In the above passage Mr. Eyre was censured for having done exactly what the Attorney-General, the present Lord Chief Justice, on the occasion of the Ceylon case, declared

it right to do, and to *continue* to do, for months after the entire suppression of a rebellion, in which not a life was taken by the rebels; and it would be impossible to state the case more clearly or more fairly than in the language of the Attorney-General (See A. Cockburn) on that occasion :—

“It was all very well to talk of this comparatively bloodless rebellion which they had suppressed without difficulty; but let them recollect the spirit of the people, the disaffection to the Government, and all the circumstances connected with the native population. It was said that the rigour was excessive, and he admitted that it was so, if they looked at the amount of punishment only with reference to the particular rebellion. But in considering the question of punishment, the Governor had to look at all the surrounding circumstances of the case. They did not punish men simply for the offences they had committed, but in order to deter others from following their example.”

Mr. Eyre acted upon this principle in the case of Jamaica; and it was surely not *his* fault that the rebellion was so serious, and the number of persons who had taken part in it so great, that the number of persons convicted and punished for it by sentence of court-martial was far greater than in Ceylon. The rebellion in Ceylon, as Mr. Gladstone said most truly, was not a murderous rebellion; was not a dangerous rebellion. The rebellion in Jamaica, as described by the Commissioners, *was* a murderous rebellion, and *was* a dangerous rebellion. It was a rebellion “for the extirpation of the white inhabitants.” And it “spread with singular rapidity,” and among a population of well-nigh half a million. It would be impossible to conceive a case of more formidable danger, of more appalling peril. It was a peril without a possible parallel. And it is admitted that the question resolved itself into one of danger. The most prominent of Mr. Eyre’s assailants, Mr. Buxton, declared in the House of Commons that if indeed the danger had been so great as Mr. Eyre had represented, the measures of severity were not excessive. Mr. Cardwell, the Secretary

of State who recalled Mr. Eyre, declared that the danger was *quite* as great as he had represented. And what can possibly explain the inconsistency of his censure and recall, except the fact of an overwhelming political necessity?

In producing this necessity by means of a combination and an agitation resulting in an excitement which Mr. Cardwell himself described as "unprecedented," the Jamaica Committee have quite neutralised its moral effect, and have deprived it of any other character than as the *result* of such a necessity. Those who, by means of pressure of political power, have left the Minister no alternative but a certain course, cannot appeal to the course he has taken, as the result of a real and impartial judgment upon the case. Those who have exerted all their force and power to influence a Minister cannot pretend that he has acted upon his own unbiassed judgment. The very fact that they deemed it *necessary* to exert all this force and influence, shows that they were conscious that *without* it the result would not have been obtained. And those who have throughout agitated upon an untrue or imperfect representation of the case, cannot profess with any sincerity that a result they have obtained by means of such an agitation, has been obtained upon the *whole* and the *real* facts of the case; while their constantly agitating upon a partial and unfair representation of the facts, betrays a consciousness that, upon the *whole* and the *real* facts, the unhappy Governor was unassailable. That this is so was distinctly, in effect, admitted by the very Minister who recalled him, when he declared that the version of the case on which his recall was demanded was entirely the reverse of the real truth. In this declaration will be found his own condemnation and Mr. Eyre's abundant vindication. Even Mr. Buxton admitted that his recall could not be justifiable if the danger was so great as he had represented; and Mr.

Cardwell declared that it *was*. Thus, therefore, Mr. Eyre while being recalled was vindicated, and it is abundantly established, on the testimony of those who recalled him, that he fell a victim to political necessity, and a necessity created by a combination and an agitation, proceeding from a false and imperfect representation of the facts.

Summed up in a few words, the case is this:—That Mr. Eyre had, with a disposable force of 450 men, to keep down a rebellion which was spreading with singular rapidity among a black population of 450,000 men for the extirpation of a few thousands of English inhabitants; and he did it by the only means open to him; and for that he has been censured and recalled.

In a word, he saved the finest of our tropical colonies from the fate of St. Domingo, and for this he has been ruined.

He did it in the only way in which it was possible to do it; and in the way in which he had been *instructed* to do it by the very Ministers who recalled him—only by the execution of the guilty to deter others. And for this he has been condemned and ruined; for this, in the language of Earl Grey, speaking of the Governor of Ceylon, for this—

“For two years and a half he has been the mark for all the shafts of calumny in newspapers, showing a degree of malignity and disregard of truth, which are a disgrace to the press of this country.” (Hansard’s Debates, vol. 115, p. 876.)

For this he has been denounced as a “monster” and a “murderer,” and his name declared to be “covered with infamy.” And yet, as Lord Grey said of the Governor of Ceylon, “it might have occurred to any one with the least candour or charity”—

“It was the obvious interest of the Governor to suppress the insurrection as speedily and with as little severity as possible, and that he must have wished it, if for no higher motive, at all events, for the credit of his Government. On the other hand, he could have no conceivable motive

for the cruelty imputed to him, but that of a love of blood for its own sake, and a wanton pleasure in the infliction of suffering, which are fortunately rare even in the worst men. If all the rebels who suffered death were convicted by courts-martial composed of officers of the regiments employed in the island, the sentences pronounced by those courts were duly approved by the officers in command at the places where the trials were held, and Lord Torrington's responsibility is confined to that of having declined to exercise his power as Governor to remit the punishment of death, which the courts-martial had thought it right should be inflicted on a comparatively small number of the ringleaders in the rebellion. In some of these cases he would not have had the power to interfere, even if he had wished it, because some of the capital executions were carried into execution before there was time to report to him on the subject, it having been justly considered that the effect of the punishment greatly depended upon its being prompt, and that by making it so, the public safety would be sufficiently secured by inflicting it on a smaller number of persons than might otherwise be necessary." (Colonial Policy, vol. ii., p. 189.)

All this was eminently true of Mr. Eyre, in the case of Jamaica; and it is to be observed, that although the noble Earl who was Colonial Minister at the time, reduced his statement of the severities inflicted within the limits of the official returns, the actual facts as stated in the House of Commons were very different, and showed that scores of men were executed by court-martial months after open rebellion was at an end.

That indeed was a case of the least possible danger; for it was a mere political rising, without any tendency to massacre or any other atrocity; and it took the usual character of a political rebellion, the assembling of bodies of men, who, on encounter with the troops were at once dispersed and slaughtered—the easiest possible kind of rebellion to deal with; yet even of this Lord Grey wrote:—

“Armed resistance to the constituted authorities of the state, on account of the wide-spreading calamities to which it leads, and the amount of suffering which it occasions, ought to be regarded as one of the most heinous crimes of which men can be guilty. It is, therefore, a false and sickly humanity which would shrink from inflicting prompt and condign punishment on the leaders in the commission of such a crime, in order to protect

the thousands of innocent persons who might suffer from leaving it unchecked, and also to avert the necessity of inflicting more numerous punishments in the end by preventing the contagion of rebellion from spreading among the deluded followers of those who begun it. Among a barbarous or semi-civilised people, this is more especially necessary, and I am persuaded that any hesitation or want of vigour and promptness, in the circumstances in which Lord Torrington was placed, would probably have cost the lives of as many hundreds, possibly of as many thousands, as there were individuals capitally punished under his authority." (Ibid., p. 19.)

The case of Jamaica, as has been seen, was one of infinitely greater danger, as it was the case of a rebellion with the object of exterminating a few thousands of white inhabitants scattered everywhere among myriads of blacks who might massacre them all without any armed rebellion at all. In such a case what Lord Grey said was extremely true :—

"I must add that governors of distant colonies, in times of rebellion, are placed in situations of so much difficulty and responsibility, that every generous mind will be disposed to put the best construction on their conduct, and to believe, till the contrary is clearly proved, that they have acted to the best of their judgment. Even if this consideration and a sense of what is due to men on whom such arduous duties are imposed is insufficient, a regard for the safety of our colonial empire ought to prevent the repetition in future of such attacks as those which have been directed against Lord Torrington and Sir Henry Ward, for having performed a most painful duty in putting down rebellion. It is possible that the expectation of being exposed to this sort of obloquy should fail to exercise some influence on the mind of a colonial governor, called upon suddenly to act in the trying emergency of a rebellion, threatened or begun? Must it not of necessity add to his difficulty in forming a correct judgment as to the course he should take? and would it be unnatural that he should be induced to shrink from the prompt exercise of a necessary severity, by knowing that the very success of that severity in averting the danger, is likely to be wrested into the means of injuring him."

The noble lord added :—

"It is by no means certain that the interests of the country may not have already felt elsewhere some of the injurious effects which the attacks directed against the Governor were calculated to produce."

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And he adduced instances in illustration of his remarks, and then observed :—

“A careful perusal of the papers laid before Parliament will, I think, lead others to the conclusion at which I myself have arrived, that a too anxious though most humane desire on the part of the Governor to abstain from measures of severity, had a very unfortunate effect, in preventing a check from being given in the first instance to the rebellious disposition which showed itself.” (Ibid., p. 237.) “It is to my mind clear, that the impunity, or at least the comparative impunity, of those who have been proved guilty of the murder of loyal subjects, was calculated to do infinite mischief, and that if a more prompt example had been made of the most guilty, the contagion of rebellion would not have spread so far.” (Ibid., p. 237.)

The “prompt examples,” in that case, extended over eleven weeks after all danger was at an end. In the Jamaica case not a single day! Well might it be said that such a course as has been taken in the case of Mr. Eyre, is “not likely to conduce to the interests of our colonial empire.”

Nor is it likely to be of any advantage to the interest of humanity. Mr. Eyre, it is admitted, gave no personal sanction to any inhumanity or excess, and, it is proved, made earnest suggestions in favour of humanity and moderation. They have not only not secured him against censure and recall, but they have not protected him against the most infamous and odious accusations of cruelty and inhumanity. He sent an earnest suggestion to the Commander-in-chief that the punishment of death should not be inflicted except where it was deserved; nor that of flogging where it could be avoided. No one, not even the men who reviled him or the Minister who recalled him, has been able to suggest anything that he could have done to prevent excess which he had not done, and yet he stands dismissed and discredited, exactly as if he had personally sanctioned it. He is left in the same position as if he had been legally convicted of the worst possible degree of callous indifference to cruelty, or inhumanity, in which case the

heaviest sentence that could have been inflicted upon him would have been a declaration of his incapacity to serve the Crown. Absolved from all serious culpability by the finding of a jury, he is nevertheless left in the same position as if he had been convicted of the worst.

No doubt the troops had committed some sad excesses. But it had never yet been considered that the excesses of troops, in the repression of rebellion, or the exercise of martial law, were to be visited upon the civil government who had simply directed the troops to act. *They* have always been judged by their own orders or directions. Thus Mr. Alison, in describing the excesses committed on the occasion of the Irish rebellion, observes :—

“It is but justice to the British Government to add, that although many grievous acts were perpetrated by the troops under their orders in its suppression, yet the moderation and humanity which *they themselves* displayed towards the vanquished, were as conspicuous as the vigilance and firmness of their administration.” (Hist. Europe, vol. vi., p. 213.)

Their moderation and humanity consisting in this, that they stopped the execution of martial law when *they* were satisfied, not only that open rebellion was at an end, but that the danger of its renewal was at an end. They continued the exercise of martial law a considerable time after *open* rebellion was at an end, and during that period sad excesses were committed. Yet the historian does not dream of throwing any blame upon the *Government* of that day, nor even upon the Lord Lieutenant, and he even applauds their “moderation and humanity,” because—having allowed the exercise of martial law some time after open rebellion, and so long as *they* thought there was *danger* of it—they stopped it when *they* thought the danger was at an end. The Imperial Parliament took the same view, and not only did not think the Lord Lieutenant deserving of censure for having so allowed the exercise of martial law, but

passed an Act of Parliament *expressly to allow of it in future*—that is, to allow of the exercise of martial law not merely during open or actual rebellion, but in case of *danger* of rebellion. That which the Impèrial Parliament, a little more than half a century ago, thought so proper to be done, that it first approved of its being done *without* any statutable authority, and then passed an Act expressly to *allow* of it, the Governor of a distant colony, in presence of an emergency infinitely greater, and a peril infinitely more formidable, might well consider himself justified in doing, under *the express terms of a statute* passed for the very purpose of authorising it to be done. Yet that exercise of martial law so long as there appeared any *danger* of rebellion, which a distinguished historian, writing in our own time, described as not at all inconsistent—notwithstanding unhappy excesses committed by the troops—with “moderation and humanity” on the part of the Governor, has in the present case been stigmatised as cruelty, and denounced as inhumanity!

Summed up shortly, the case was this: Mr. Eyre had to deal with a peril without any possible parallel upon earth, the peril of a general massacre of a few thousand English, scattered among half a million of negroes; and he kept up martial law until military reinforcements had arrived and had been distributed through the country so as to secure the safety of the whites; *and not one day longer*. He directed that no one should be executed or punished, except in cases which really deserved and required it; as the insurgents were numbered by thousands these cases were numbered by hundreds; but there were no executions authorised without trial; and, in all but a few exceptions, the trials were proper and the sentences were just. This is the case, in substance, as stated by the Commissioners. That it is so, the reader will have seen.

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* It has been already stated (see note to Contents and the Preface) that the Author had no intention of making any imputations upon the judicial character of the Lord Chief Justice, or of imputing to him, or to any one, any intentional injustice. And he should have thought that the numerous passages in which he has written in terms of respect of that distinguished person, might have rendered such a

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disclaimer unnecessary. As, however, some isolated sentences, taken apart from the context in which they occurred, might produce a contrary impression, the Author desires to correct or explain them. A passage, in which he says an extrajudicial observation to the prejudice of Mr. Eyre caused scandal to justice, means, he should imagine, no more than that it raised in the minds of many persons, a feeling of offence, and the sense of injustice. Another passage, in which he says that the Lord Chief Justice's omission to mention the case of Ceylon, in which he had upheld martial law, was significant of a sense of the injustice of holding up Mr. Eyre to obloquy for exercising martial law, meant, that it probably *ought* to have occurred to his mind; and perhaps it would have been better expressed thus: "Suggestive, surely, of some doubt as to the justice," &c. And, speaking generally, the Author desires that any doubtful phrases may be construed in accordance with the spirit of the above disclaimer, and see "*Corrigenda*," at the end.

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ERRATA ET CORRIGENDA.*

- Page 59, line 7 (from bottom). For "acts," read "facts."
- „ 200, line 12. For "periods," read "points."
- „ 299, line 10. For "same," read "service."
- „ 368*g*. For, "as the governing fact," read, "*is*"; read also, "the *main* element in the case."
- „ 446, line 31. For "*which* indeed," read, "*and* indeed."
- „ 449, line 9 (from bottom). Omit "one-sided," &c., and read "state of mind."
- „ 452, line 15. Omit "reading," and read, in next line, "been thus imbued with."
- „ 462, line 24. For "flagrant," read "apparent."
- „ 463, last line. For "very eagerly," read "unhappily."
- „ 471, line 9. For "*in* the admission," read, "*on* the admission."
- „ 480, line 6 (from bottom). For "cruel," read "severer."
- „ 481, line 9. For "and one of," &c., read, "according to the code of military law."
- „ 487, lines 30 and 35. For "manifestly" and "flagrantly," read, "entirely."
- „ 485, line 4 from bottom. For "desire," read, "require."
- „ 489, line 10. For "brought scandal upon," read, "offended against."
- „ 490 and 491. For "perversion," read, "misconception."
- „ 493, last line but one. For "cruel," read "painful."
- „ 494. Omit "cruel and."
- „ 495. For "cruel," read, "painful."
- „ 498. Omit "undoubted" and "passionately"; and for "violation," &c., read, "surely a" "sad obliviousness of justice"; and, in the last line, for "*has* been," read, "*had* been."
- „ 499. Omit the words, "cruel and," and omit "uncharitable."
- „ 500, line 24. For "condense," read, "condemn."
- „ 511. For "significant," read, "suggestive"; "suggestive of some doubt as to the justice of," &c.

* The author gladly avails himself of this opportunity of correcting a few expressions which escaped from his pen, while writing under a warm sense of injustice; but which were not the result of any intention to impute conscious injustice.

OTHER PUBLICATIONS

BY THE SAME AUTHOR.

A TREATISE UPON MARTIAL LAW, as allowed by the Law of England in time of Rebellion : With Illustrations, Drawn from the Official Documents in the Jamaica Case ; and Comments, Constitutional and Legal, upon the measures taken in that case, and the inquiry as to the execution of Martial Law.

"The publication of Mr. Finlason's treatise—simultaneously with the Report of the Royal Commissioners—is extremely opportune. Singular though it may seem, the subject of martial law has never, until now, been treated of by any of our legal writers. And as a natural consequence, the ignorance manifested when it became important to determine its nature, and the rules by which it is governed, were almost universal. * * * It is not too much to say, that much of this misconception would have been avoided if such a treatise on martial law had been extant as that which was before us. Those who are acquainted with Mr. Finlason's writings are well aware of the exhaustive process to which he submits every subject which he handles, and will not be surprised to learn that he has broached no opinions which he is not in a position to support by a host of authorities. As a useful commentary, Mr. Finlason's book merits a place in the library of every educated man. For the legal profession it supplies a want which has long been felt."—*Morning Post*, July 30th, 1866.

"Mr. Finlason adds to his text a full commentary—constitutional and legal—bristling with innumerable authorities."—*Daily News*, September 30th, 1866.

"The subject is in itself one of great difficulty, and happily it has received no elucidation in the modern history of our country. * * * Few who are acquainted with our common law, and the formal, dilatory, and often uncertain process which in its extreme jealousy for the liberty of the subject, it prescribes in a criminal prosecution, will deny that it is totally unfit to deal with any wide-spread rebellion. It is in the present day highly improbable that a state of things should ever arise, from rebellion in England, which should call for the exercise of the supreme power of the Crown to proclaim martial law. * * * But improbable as it is that the power to declare martial law will ever have to be exercised here, there are not many persons who will deny that the right exists, or who will desire to see it abolished. * * * It can, indeed, only be exercised in time of war. But then rebellion is war; and to question what amount of turbulence in the people amounts to a levying of war against the Crown, is a question of fact to be decided by the Crown or representatives. * * * Few persons could treat this subject with a fair appreciation, both of the danger of anarchy and of tyranny. While, however, we cannot recommend the adoption of all Mr. Finlason's opinions, we can safely advise the perusal of this book, which contains an amount of information on the subject which will be most valuable to those who desire to form an opinion on a matter which is likely to attract much of the public attention, and which we believe, notwithstanding its magnitude and importance, has not hitherto been the subject of any separate legal treatise."—*Athenaeum*, 11th August, 1866.

COMMENTARIES ON MARTIAL LAW, as allowed by the Law of England in time of Rebellion : With all the Authorities on the subject.

"The author has swept every corner in his research for authorities in any way bearing on his theme; and in this work will be found all that can be known on the subject of martial law."—*Law Journal*, September 8th, 1867.

"It is well that any doubts which hang around martial law should be the subject of temperate inquiry. * * * The author maintains that martial law, on occasions of special emergency, is part of our constitutional system. * * * Yet the agitation of the question proves the necessity for determining the character of martial law, the authority which it confers, and the restraints and regulations by which its exercise ought to be limited. The author considers that the instructions lately sent to the Governors of Colonies from the Colonial Office are sufficient to answer this purpose."—*Morning Post*, October 16th, 1867.

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"There is no saying how things may grow; and no system of civilised jurisprudence would be complete if it did not recognise such a power as Mr. Finlason clearly establishes in the British Crown. We heartily recommend his book to every lawyer; and, indeed, to every student of constitutional history."—*Morning Herald*, September 19th, 1867.

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"Mr. Finlason has treated the subject with remarkable learning and power, and so ably and thoughtfully, that his commentaries are entitled to occupy the foremost position among the modern treatises on the subject."—*Public Opinion*, April 4th, 1868.

"It is most desirable that a clear and decisive exposition of the law, such as that in the volume before us, should be given. The principle laid down by the historian Hallam, and quoted by the author, runs through the whole book. The author is well-known on the Home Circuit, and has occasionally acted as Deputy Recorder of Colchester."—*Essex Standard*, March 7th, 1868.

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"Mr. Finlason has exhibited an acquaintance with the subject possessed by few men; and happily research and knowledge have ranged his opinion and judgment on the side of authority and order, as opposed to anarchy and rebellion. Colonial governors, military officers, lawyers, and members of Parliament will prize the 'Commentaries.'"—*Exeter Gazette*, January 24th, 1868.

REVIEW OF THE AUTHORITIES ON THE REPRESSION OF RIOT AND REBELLION, especially with a view to the legal responsibility of those engaged in such repression.—London: Stevens & Son, Bell Yard, and Chapman & Hall, Piccadilly.

"The book is what it professes to be, a review of the authorities as to the repression of riot or rebellion, and we think it a treatise which might be studied with advantage by lawyers, magistrates, and commanding officers. Certainly it will commend itself to lovers of order, and it will materially assist persons placed in positions of grave responsibility in deciding on the course of action to be adopted on occasions of public danger. The historical sketches, which deal with all the notable cases of riot and disorder within the last hundred years, are written with great spirit, and the book has pretensions outside of its legal argument. Perhaps the learned author will forgive us for being bold enough to say that this is decidedly the most able and the most attractive work of the trio, and that in it there are traces of greater care in preparation, together with more nicety of style.

"The history of disorder leads off with the tale of the Wilkes riot, and the prosecution of Mr. Gillam for authorising the guards to fire on the mob. Mr. Finlason points out that the finding of the grand jury of a true bill against that gentleman had the effect of paralysing the magisterial arm in the subsequent outrages on property. Throughout the book Mr. Finlason has ingeniously blended an argument on the necessity of arming the civil power with the moral energy which the sanction of law alone can give, with his more direct object of showing what is rebellion, what are the remedies given for the evil, and what is meant in the legal authorities by the expression 'martial law.'

"The historical sketch embraces the story of the 'Manchester Massacre,' and the case of Sir F. Burdett, who was indicted for his famous libel written on that occasion; the case of Kennett, Lord Mayor of London, who was prosecuted by the Attorney-General for gross neglect in taking no measures to put down the riots in 1780; and at each of the points in the history of disorder the dicta of judges are given, and their bearing upon the general doctrines propounded are explained. The book also contains reviews, as exemplified by events, of the duties of colonial governors, their powers and liabilities, with some reference to the Jamaica case."—*Law Journal*, 4th September, 1868.

"These commentaries are exhaustive, and Mr. Finlason's comments are lucid. The volume is ably compiled, and will be of very considerable assistance to the Bench and the Bar when the next occasion arises. In the meantime it might very usefully find its way into the hands of our legislators."—*Law Times*, September 19th, 1868.

"The work, which is well executed, has a permanent interest and value. No lawyer and few students of history and politics should be without it."—*Globe*, 22nd August, 1868.

"The book is the work of a lawyer and a man of sense. It contains a full account of the present state of the law on the subject."—*Post*, August, 1868.

"Few lawyers or laymen were accurately informed as to the state of the law, in reference to the repression of insurrection or rebellion. No text book, so far as we know, was available, although the need of one must have occasionally been felt; the omission to supply it being the more remarkable when we consider on the one hand how tenacious not only Englishmen but those who live under the same constitutional Government, are of their rights and liberties; and on the other that officers of the Crown are responsible for neglect of duty, as well as for exceeding their jurisdiction. The object of Mr. Finlason is to make good the deficiency; and praise must be accorded to him for the manner in which he has performed his task. He has been at great pains to collect all the legal and historical dicta bearing upon these points, and upon the legality of martial law in general, which were to be met with. He has moreover digested them with care, and discussed them ably and learnedly."—*Midland Counties Herald*, September 10th, 1868.

"The case of Governor Eyre excited the greatest possible interest in this country. It did so for two reasons; first, because of the uncertainty in regard to the legality of martial law, secondly because a political issue was supposed to underlie the legal question. The paradox that the law places the sword in the hand of its officers, and entrusts them with its power, only to punish such officers for using the discretionary authority according to their judgment, has no foundation in fact. *Governor Eyre, as the saviour of Jamaica, is entitled to the gratitude of Englishmen.* For his lucid review of the authorities which protect our property and lives, we have to thank Mr. Finlason."—*Oxford Times*, 17th October, 1868.

"In every way the book before us corresponds with its predecessors in respect of clearness and correct jurisprudence. To lawyers it will be necessary, not to say indispensable, and to politicians useful. We heartily recommend the book to every student of our Constitution, as one which exhausts the law upon a much vexed question."—*Newcastle Daily Journal*, 16th October, 1868.

REPORT OF THE CASE OF THE QUEEN *v.* EYRE, IN THE COURT OF QUEEN'S BENCH: With an Introduction, upon the Liability of a Colonial Governor to Criminal Prosecution.—London: Stevens & Son, Bell Yard, and Chapman & Hall, Piccadilly.

"Mr. Finlason, whose recent works on martial law are among the most important contributions we possess to our knowledge of a difficult subject, has now issued a full report of a case in which almost all the principles of his favourite study are involved. He has given us a long and faithful report of the trial with the indictment, the evidence from the depositions, and the charge of Mr. Justice Blackburn, the whole accompanied by an elaborate introduction."—*Globe*, September 19th, 1868.

JUSTICE TO A COLONIAL GOVERNOR; or, Some Considerations on the Case of Mr. Eyre. (*a.*)—London: Chapman & Hall.

"The book before us contains the substance of all the documents, discussions, and proceedings relating to the case of Mr. Eyre, and the author certainly makes out a more complete justification of the much-persecuted ex-governor than has hitherto appeared. It is impossible to rise from the reading of this work without being satisfied that Mr. Eyre had good reason for every step he took in the suppression of the rebellion in Jamaica, and that by those measures he spared the lives of the white population, and saved the island. Those who would understand the real merits of the position occupied by the Lord Chief Justice Cockburn in the matter of the Eyre prosecution should read this work. It is almost impossible to avoid the conclusion that this great lawyer was led away by popular feeling to take a view of the case not warranted by the law or the facts. No one has done so much as Mr. Finlason to place the whole case in its true light before the world."—*Plymouth and Exeter Gazette*, 31st October, 1868.

(*a.*) The Introduction to the present work.



